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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 268.

HENRY A. OETJEN, PLAINTIFF IN ERROR,

vs.

CENTRAL LEATHER COMPANY.

No. 269.

HENRY A. OETJEN, PLAINTIFF IN ERROR,

vs.

CENTRAL LEATHER COMPANY.

25

IN ERROR TO THE CIRCUIT COURT OF HUDSON COUNTY, STATE OF NEW JERSEY.

INDEX.

	Original.	Print
Notice of appeal, dated November 2, 1914	1	1
Notice of appeal, dated November 4, 1914	2	1
Grounds of appeal	3	2
Writ of replevin	5	3
Complaint	6	4

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	Original.	Print
Answer to O'Neill	7	4
Petition of Oetjen	8	5
Order making Oetjen party plaintiff	12	8
Complaint of Henry A. Oetjen	13	8
Answer to Henry A. Oetjen	15	10
Rule for judgment, entered November 2, 1914	17	11
Rule for judgment, entered November 4, 1914	18	11
Notice of appeal, dated November 2, 1914	20	12
Notice of appeal, dated November 12, 1914	21	13
Writ of replevin	22	13
Complaint of O'Neill	23	14
Answer as to O'Neill	24	15
Petition of Oetjen	25	15
Order making Oetjen party plaintiff	30	18
Complaint of Henry A. Oetjen	31	18
Answer as to Henry A. Oetjen	33	20
Rule for judgment	35	21
Minutes of trial	37	21
Stipulation to try cases together	38	22
Testimony of Manuel M. Martinez	39	23
Testimony of Ira Cohen	123	49
Stipulation as to value, &c	132	51
Colloquy between court and counsel	134	52
Testimony of Ira Cohen (recalled)	136	53
Motion for non-suit	141	53
Testimony of Rafael Zuberan	148	58
Colloquy between court and counsel	176	75
Testimony of Lazaro de la Garza	181	77
W. Lee Field	218	101
Aureliana S. Gonzales	239	117
Charles Roussell Barranco	239	118
Colloquy between court and counsel	239	119
Testimony of Alonzo L. Taylor	240	121
Graham Bailey	242	122
Frederico Gonzales Garza	244	123
Frank W. Brown	245	123
Robert H. Ewell	309	161
Robert E. Paine	333	168
Defendant's motion to direct verdict	353	178
Plaintiff's motion to direct verdict	354	178
Defendant's exceptions	358	180
Exhibit P-9—Assignment and bill of sale, Martinez & Co. to Henry Oetjen, of January 28, 1914	359	180
P-10—Letter, McDermott & Enright to Secretary of State, of August 14, 1914	360	181
P-11—Letter from Department of State by Mr. Lansing to McDermott & Enright, of August 20, 1914	362	182
Unnumbered exhibit referred to on page 352 of state of case, proclamation of President Taft of March 2, 1912	363	182
Unnumbered exhibit referred to on page 352 of state of case, proclamation of President Taft of March 14, 1912	365	184

	Original.	Print
Exhibit D-1—Plan de Guadalupe, in Spanish (not printed)....	367	185
D-1*a*—Translation of Exhibit D-1.....	367	185
D-2—Carranza decree of October 17, 1913, in Spanish (not printed)	371	187
D-2*a*—Translation of Exhibit D-2.....	371	187
D-3—Decree of Carranza of May 10, 1913, in Spanish (not printed)	376	191
D-3*a*—Translation of Exhibit D-3.....	376	191
D-4—Bill of sale, Villa to Finnigan-Brown Co., of January 3, 1914, in Spanish (not printed).....	378	192
D-4*a*—Translation of Exhibit D-4.....	378	192
D-8—Contract, December 1, 1913, between Villa and Finnigan-Brown Co., in Spanish (not printed).	379	192
D-9—Translation of Exhibit D-8.....	379	193
D-16—Message of President Wilson of August 27, 1913..	381	194
D-17—Extract of the message of President Wilson of December 2, 1913.....	389	198
D-18—Proclamation of President Wilson of February 3, 1914	390	199
D-19—Message of President Wilson, April 20, 1914.....	392	200
D-20—Resolution of Congress of April 21, 1914.....	396	202
D-21—Letter from Mr. Lansing to Mr. Herbermann of October 21, 1914.....	397	203
D-22—Supplementary letter of Mr. Lansing to Mr. Hebermann of October 21, 1914.....	400	204
Writ of error.....	407	205
Judge's return to writ of error.....	410	206
Citation and service.....	411	206
Assignments of error.....	412	207
Assignments of error.....	418	209
Opinion of court of errors and appeals.....	425	212
Judgment of court of errors and appeals.....	435	218
Stipulation as to record.....	437	218

1 *Notice of Appeal.*

(Filed November 12, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY, Body Corporate, and ERIE RAILROAD COMPANY, Body Corporate, Defendants.

Action at Law.

To Messrs. Edwards & Smith, Attorneys of Central Leather Company:

Please take notice that Henry A. Oetjen, one of the plaintiffs in the above entitled cause, hereby appeals from the whole and every part of the judgment entered in favor of the defendant Central Leather Company and against the plaintiffs, in the above entitled cause in the Hudson County Circuit Court the second day of November, 1914, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated, November 2nd, 1914.

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

2 *Notice of Appeal.*

(Filed November 12, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY, Body Corporate, and ERIE RAILROAD COMPANY, Body Corporate, Defendants.

Action at Law.

To Messrs. Edwards & Smith, Attorneys of Central Leather Company:

Please take notice that Henry A. Oetjen, one of the plaintiffs in the above entitled cause, hereby appeals from the whole and every

part of the judgment entered in favor of the defendant Central Leather Company and against the plaintiffs, in the above entitled cause in the Hudson County Circuit Court the fourth day of November, 1914, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated, November 4th, 1914.

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

3 *Grounds of Appeal.*

(Filed November 12, 1914.)

New Jersey Court of Errors and Appeals.

HENRY A. OETJEN, Plaintiff-appellant,

vs.

CENTRAL LEATHER COMPANY (ERIE RAILROAD COMPANY, Impleaded), Defendant-respondent.

On Appeal from Hudson County Circuit Court.

The appellant, Henry A. Oetjen, states the following grounds of appeal.

1. That the Court erred in admitting evidence for the defendant over the objection of the plaintiff, as more particularly specified in the minutes of the trial.

2. That the Court erred in denying plaintiff Oetjen's motion to strike out evidence admitted on behalf of the defendant.

3. That the Court erred in admitting evidence on the part of the defendant over the objection of the plaintiff, relative to political conditions in the Republic of Mexico, and denying plaintiff's motion to strike out such evidence.

4. That the Court erred in directing the jury to find a verdict for the defendant Central Leather Company, against the plaintiff, Henry A. Oetjen.

5. The Court erred in denying the motion of Henry A. Oetjen to direct a verdict in his favor against the defendant Central Leather Company.

6. That the Court erred in finding that a state of civil war existed in Mexico and that the political department of the United
4 States has recognized a state of civil war therein and has recognized the belligerency of the contending forces, namely the Huertistas and the Constitutionalists, and has declared the position of the Government of the United States as to the belligerents to be one of neutrality.

7. That the Court erred in finding that the seizure of the hides in suit from plaintiff's assignor constitutes an act that cannot be questioned in the trial Court.

8. That the Court erred in ruling that the provisions of the Hague Convention were not applicable.

9. That there was drawn in question the validity of a treaty or statute of the United States, to wit; the provisions of the so-called Hague Convention, for the conduct of war on land, and that the Court erred in deciding against the validity of such treaty or statute as applicable to the case at bar.

10. That the plaintiff claimed a right, privilege and immunity under a treaty or statute of the United States, to wit: The immunity of the chattels in suit, from seizure, pillage or confiscation, as secured by the law of the land, the law of nations, as well as by a treaty or statute of the United States, to wit: The provisions of the so-called Hague Convention, for the conduct of war on land.

McDERMOTT & ENRIGHT,
Attorneys for Henry A. Oetjen, Appellant.

5 *Writ of Replevin.*

The State of New Jersey to Nicholas P. Wedin, Sheriff of the County of Hudson, Greeting:

[L. S.]

We command you that if James L. O'Neill shall make you secure you cause to be taken and delivered to him the following described articles: 1587 Dry Hides, 5 bales of Calf Skins, 852 bundles of Green Salted Hides, which Erie Railroad Company, a corporation, and Central Leather Company, a corporation, took and unjustly detained, as is said; and that you summon the said Erie Railroad Company and Central Leather Company to answer the annexed complaint of James L. O'Neill in an action at law in the Hudson County Circuit Court, and that you notify them that unless they file their answers to said complaint with the Clerk of said Hudson County Circuit Court at Jersey City within twenty days after service upon them of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against them.

Witness, William H. Speer, Judge of the Hudson County Circuit Court, at Jersey City, this twenty-second day of January, Nineteen hundred and fourteen.

JOHN F. CROSBY, *Clerk.*

McDERMOTT & ENRIGHT,
Attorneys.

6 *Complaint.*

(Filed February 6, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiff,

vs.

ERIE RAILROAD COMPANY, a Corporation, and CENTRAL LEATHER COMPANY, a Corporation, Defendants.

Action at Law. In Replevin.

Plaintiff, residing in the village of Hempstead, in the State of New York, says that:

1. On January 22, 1914, plaintiff was and ever since has been the owner of the following goods and chattels, to wit:

1587 dry hides, 5 bales calf skins, 852 bales of green salted hides, the value of said 1587 hides being $8,452.69, the value of said 5 bales of calf skins being $350, and the value of said 852 bundles of green salted hides being $13,450.

2. On said date the plaintiff was and ever since has been lawfully entitled to the immediate possession of the same.

3. On said date, at the Erie Railroad yard in the City of Jersey City, Hudson County, New Jersey, the defendant wrongfully took said goods and chattels from the possession of the plaintiff and ever since *have* wrongfully detained and still wrongfully detains the same.

4. On January 22, 1914, the plaintiff demanded possession of said goods and chattels from the defendants and said demand was refused.

Plaintiff demands possession of said goods and chattels and $10,000 damages for their detention.

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

7 *Answer to O'Neil.*

(Filed February 28, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL et al., Plaintiffs,

vs.

ERIE RAILROAD COMPANY, CENTRAL LEATHER COMPANY, Defendants.

The defendant, Central Leather Company, a corporation of the State of New Jersey, having its principal office at No. 15 Exchange

Place, Jersey City, says in answer to the complaint of James L. O'Neill:

1. Paragraph one of the complaint is denied.
2. Paragraph two of the complaint is denied.
3. Paragraph three of the complaint is denied.
4. Paragraph four of the complaint is admitted.

By way of Counterclaim:

1. This defendant at the time of the alleged taking was and still is the owner of so much of the goods and chattels mentioned in the complaint as were taken by the Sheriff of Hudson County, under the writ of replevin herein, and was entitled at that time to the immediate possession thereof; subject only to the rights of its bailee, the Erie Railroad Company, to whom it had delivered the same for shipment to various points. This defendant demands possession of the said goods and chattels and Ten Thousand Dollars ($10,000) damages.

EDWARDS & SMITH,
Attorneys of Defendant Central Leather Company.

8 *Petition.*

(Filed January 30, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiff,

vs.

ERIE RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

To the Honorable Judges of the Circuit Court in and for the County of Hudson:

Your petitioner, Henry A. Oetjen of Jersey City, Hudson County, New Jersey, respectfully shows as follows:

1. That heretofore on January 22, 1914, James L. O'Neill sued a writ of replevin out of the Circuit Court in the above entitled action, commanding the Sheriff of Hudson County to replevy 1587 Dry Hides, 5 Bales of Calf Skins, and 852 Bundles of Green Salted Hides, and did thereupon deliver to the Sheriff the statutory bond in the penal sum of $45,000 with sufficient surety.

2. Under said writ said Sheriff has seized and now holds merchandise answering to the description in said writ and the complaint annexed thereto, as follows:

273 Bundles of Green Salted hides now contained in Car. No. 76115 of the Erie Railroad Company;

629 Dry Hides now contained in Car No. 102519 of the Grand Trunk Railroad;

564 Dry Hides now contained in Car No. 107736 of the Erie Railroad Company.

All of above cars are now at the yard of the Erie Railroad Company, Jersey City, Hudson County, New Jersey.

3. That plaintiff James L. O'Neill claims as assignee of Mexico Hide Company.

The cause of action of the plaintiff is based on the claim that Mexico Hide Company, Inc., purchased hides of the description set forth in the writ and complaint from M. M. Martinez & Company (a partnership composed of Manuel M. Martinez and Gregorio Canales); that M. M. Martinez & Company were then engaged in the business of dealers in hides at Torreon, Mexico, and that the hides in question were located at Torreon and shipped by M. M. Martinez & Company, Inc., and stolen in transit in the Republic of Mexico by armed bands of insurrectos against the existing Government of the Republic of Mexico.

4. Petitioner further shows that said firm of M. M. Martinez & Company were also the owners of certain other hides of the same general description as those consigned to Mexico Hide Company, which hides were unsold and remained the property of said firm of M. M. Martinez & Company, and that said firm, in order to remove said property to a place of greater safety consigned the same to San Pedro, in the Republic of Mexico, and that said hides likewise were stolen in transit by the same or other bands of insurrectos.

That the hides seized under the writ of replevin in above suit and now in the possession of the Sheriff at the yard of the Erie Railroad Company, as aforesaid, are part of the hides shipped by M. M. Martinez & Company from Torreon to San Pedro and stolen as aforesaid, and are not wholly the hides shipped by M. M. Martinez & Company to Mexico Hide Company and stolen in transit as aforesaid.

5. That said firm of M. M. Martinez & Company, composed as aforesaid, has duly sold, assigned, transferred and set over unto your petitioner all of the hides aforesaid now held by said Sheriff under said writ of replevin, together with all rights of action with respect thereto, and the taking thereof.

6. Your petitioner, therefore, claims an interest in the subject of the above entitled action and claims that he is the true and lawful owner of said goods and chattels and entitled to the possession thereof not only as against the defendants Erie Railroad Company and Central Leather Company, but also against the plaintiff, James L. O'Neill.

Petitioner further shows that his claim not only is to an interest in the subject matter of above action, but that his cause of action has a common question of law and fact with that of the plaintiff and arises out of the same transaction or series of transactions: The common question of law being the right of the insurrectos (who have never been recognized as belligerents under the law of Nations) to steal and confiscate said merchandise and make good title thereto, by sale to third parties. Further, said question grows out of the same transaction or series of transactions, namely, attempted seizures and confiscations by armed bands of insurrectos, acting in con-

junction with each other, and under more or less organized leadership.

7. Petitioner further shows that a complete determination of the controversy between above plaintiff and defendants (which will involve a determination of the title and ownership of said
11 chattels) cannot be had without the presence of your petitioner as assignee of M. M. Martinez & Company.

Petitioner further shows that he has an interest or title in the subject matter of above suit which the judgment will affect.

Petitioner, therefore, prays that he may be made a party plaintiff in the above entitled suit and that the original writ herein may be amended accordingly and that petitioner may have a reasonable time to be prescribed by the Court for filing and serving his complaint herein, and that petitioner may have such other relief as may be equitable and just.

McDERMOTT & ENRIGHT,
Attorneys of Petitioner.

STATE OF NEW JERSEY,
County of Hudson, ss:

Henry A. Oetjen, of full age, being duly sworn according to law on his oath says:

That he is the petitioner named in the within petition; that he has read the same and that the matters and things therein set forth are true as he is informed and verily believes.

That the allegations as to his cause of action and the ownership of the chattels described in the foregoing petition are based upon the statement of Manuel M. Martinez, who deponent is informed and believes is not only personally familiar with the circumstances surrounding the loss of his property, but has also inspected and identified the property now held by the Sheriff of Hudson County under the writ of replevin mentioned in the within petition.

Deponent holds in his possession a written instrument of assignment transferring to him all of the rights of M. M. Martinez
12 & Company in the premises.

HENRY A. OETJEN.

Sworn and subscribed to before me this 30th day of January, 1914.

[SEAL.] ALICE M. BOYLE,
Notary Public of New Jersey.

Order.

(Filed January 30, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiffs,

vs.

ERIE RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

On Petition, &c.

Upon reading and filing the petition of Henry A. Oetjen filed herein this day,

It is ordered, that Henry A. Oetjen be added as a party plaintiff in the above entitled suit and that said Henry A. Oetjen file and serve a copy of his complaint upon the plaintiff and upon the defendants within ten days from the date hereof.

Further ordered, that the writ of replevin in above cause be amended by adding the name of Henry A. Oetjen as a party plaintiff thereto.

Dated, January 30th, 1914.

Let above rule be entered in the minutes.

WM. H. SPEER, *Judge.*

13 *Complaint of Henry A. Oetjen.*

(Filed February 11, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL et al., Plaintiffs,

vs.

ERIE RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

1. On January 22, 1914, Manuel M. Martinez and Gregorio Canales, partners in trade doing business under the firm name of M. M. Martinez & Company, were and thereafter until the assignment to plaintiff Henry A. Oetjen, hereafter noted, continued to be the owners of the following goods and chattels, to wit:

1193 Dry Hides and 273 Bundles of Green Salted Hides, each bundle being composed of two hides.

2. On January 22, 1914, said firm of M. M. Martinez & Com-

pany was and ever since has been lawfully entitled to the immediate possession of the same.

3. On or about January 22, 1914, said goods and chattels were unlawfully in the possession of defendant Central Leather Company, which Company did thereupon deliver the same to defendant Erie Railroad Company as a common carrier.

4. That on said date plaintiff James L. O'Neill as assignee of Mexico Hide Company did demand of said defendant the
14 possession of said goods and chattels, claiming to own the same, and to be entitled to the possession thereof, and did thereupon cause the writ of replevin in this action to be sued out and said goods replevied by the Sheriff of the County of Hudson.

5. That thereafter on or about the 28th day of January, 1914, said M. M. Martinez & Company did in writing under seal duly sell, assign, transfer and set over unto plaintiff Henry A. Oetjen said goods and chattels, together with all rights of action for the recovery of the same and damages for the detention thereof.

6. That thereafter on January 30, 1914, plaintiff did apply to the Court to be admitted as a party plaintiff in above action and the Court did thereupon make its order admitting plaintiff as a party plaintiff and amending the writ of replevin accordingly.

7. That the defendants wrongfully took and retained said goods and chattels from the possession of plaintiff's assignor at the yard of the Erie Railroad Company in Jersey City, New Jersey, on or about the 22nd day of January, 1914, until replevied from their possession by the original plaintiff herein and that plaintiff Henry A. Oetjen is the owner and entitled to the possession of said goods and chattels not only as against the defendants but the original plaintiff James L. O'Neill and his assignor, and the defendants have wrongfully detained and still wrongfully detain the same from plaintiff.

8. That said M. M. Martinez & Company were the lawful owners of said goods and chattels, together with other goods and chattels, at the City of Torreon in the Republic of Mexico, on or about the twelfth day of October, 1913, and in possession thereof, and that said goods and chattels were thereafter at Torreon or some
15 other place in the Republic of Mexico stolen from the possession of the said M. M. Martinez & Company, and thereafter unlawful same unto the possession of the defendant Central Leather Company and of the defendant Erie Railroad Company as common carrier for said Leather Company, at Jersey City, aforesaid.

Plaintiff demands possession of said goods and chattels, with damages for their detention, or in case they cannot be returned to the plaintiff, then $20,000 damages for their value and $5,000 damages for their detention.

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

Answer to Oetjen.

(Filed March 3, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL et al., Plaintiffs,

vs.

ERIE RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

The defendant, Central Leather Company, a corporation of the State of New Jersey, having its principal office at No. 15 Exchange Place, Jersey City, says in answer to the complaint of Henry A. Oetjen, who has been admitted as a party plaintiff in this action.

1. Paragraph one (1) of the complaint is denied.

16 2. Paragraph two (2) of the complaint is denied.

3. This defendant denies that on or about January 22, 1914, the goods and chattels described in the complaint were unlawfully in the possession of this defendant, but says that they were lawfully in its possession and that it had delivered the same or so much thereof as were taken by the Sheriff of Hudson County under the writ of replevin herein to the defendant Erie Railroad Company as a common carrier for shipment.

4. Paragraph four (4) of the complaint is admitted except that it denies that James L. O'Neill was the assignee of Mexico Hide Company on January 22, 1914.

5. Paragraph five (5) of the complaint is denied.

6. Paragraph six (6) of the complaint is admitted, but this defendant will insist that the said Henry A. Oetjen is not the proper party plaintiff in this action and was improperly and illegally made a party thereto.

7. Paragraph seven (7) of the complaint is denied.

8. Paragraph eight (8) of the complaint is denied.

By way of Counterclaim:

This defendant at the time of the alleged taking was and still is the owner of so much of the goods and chattels mentioned in the complaint as were taken by the Sheriff of Hudson County under the writ of replevin herein and was entitled at that time to the immediate possession thereof subject only to the rights of its bailee, the Erie Railroad Company, to whom it had delivered the same for shipment to various points. This defendant demands

17 possession of the said goods and chattels and Ten thousand dollars ($10,000) damages.

EDWARDS & SMITH,

Attorneys of Defendant Central Leather Company.

Rule for Judgment.

(Entered November 2, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY, Body Corporate, and ERIE RAILROAD COMPANY, Body Corporate, Defendants.

Rule for Judgment.

This cause being regularly on the list for trial at the September Term, 1914, of this Court, and being called, and all parties appearing, and the cause being moved by the defendant and a jury being empanelled and sworn, and the evidence offered by the respective parties submitted by their counsel being heard, and the Court being of the opinion that there was no question of fact to be decided by the jury, and having directed the jury to render a verdict in favor of the defendant Central Leather Company and against both plaintiffs.

It is thereupon on this second day of November, A. D., Nineteen hundred and fourteen,

Ordered that judgment final be entered in favor of the defendant Central Leather Company and against both plaintiffs, James
18 L. O'Neill and Henry A. Oetjen, for the possession of the goods and chattels mentioned in the plaintiffs' complaint, besides costs of suit to be taxed.

Rule actually entered this second day of November, 1914.

On motion of

EDWARDS & SMITH,
Attorneys of Defendant.

Rule for Judgment.

(Entered November 4, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY and ERIE RAILROAD COMPANY, Defendants.

In Replevin: Rule for Judgment.

This cause being regularly on the list for trial at the September Term, 1914, of this Court, and being called and both parties ap-

pearing, and the cause being moved by the plaintiffs, and a jury being empanelled and sworn, and the evidence offered by the parties submitted, and counsel for each party having requested the Court to direct a verdict in favor of their respective clients, and the respective parties by their counsel being heard, and the Court having charged the jury, and the jury having retired to consider of their verdict come again into Court and by direction of the Court
19 say that they find the defendants did not take the goods and chatteis of the plaintiffs or either of them named in the plaintiffs' complaint in manner and form as the said plaintiffs have complained against the said defendants, and they find the goods and chattels therein named are the property of the defendants.

Therefore, it is considered that the plaintiffs and each of them take nothing by their writ, but that they and their pledges to prosecute be in mercy, etc., and that the defendants do go thereof without day and that they have returned all the said goods and chattels due them to hold irrepleviable forever.

And it is further considered that the said defendants do recover against the said plaintiffs the sum of $47.91 for their costs and charges by the Court here adjudged; and that the defendants have execution therefor, etc.

Rule actually entered November 4th, 1914, on motion of Edwards & Smith, attorneys of Central Leather Company.

(Circuit Court Minutes 39-434.)

20 *Notice of Appeal.*

(Filed November 12, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY, Body Corporate, and PENNSYLVANIA RAILROAD COMPANY, Body Corporate, Defendants.

Action at Law.

To Messrs. Edwards & Smith, Attorneys of Central Leather Company:

Please take notice that Henry A. Oetjen, one of the plaintiffs in the above entitled cause, hereby appeals from the whole and every part of the judgment entered in favor of the defendant Central Leather Company and against the plaintiffs in the above entitled cause in the Hudson County Circuit Court the second day of November, 1914, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated, November 2nd, 1914.

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

21 *Notice of Appeal.*

(Filed November 12, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY, Body Corporate, and PENNSYLVANIA RAILROAD COMPANY, Body Corporate, Defendants.

Action at Law.

To Messrs. Edwards & Smith, Attorneys of Central Leather Company:

Please take notice that Henry A. Oetjen, one of the plaintiffs in the above entitled cause, herein appeals from the whole and every part of the judgment entered in favor of the defendant Central Leather Company and against the plaintiffs, in the above entitled cause in the Hudson County Circuit Court the fourth day of November, 1914, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated, November 12th, 1914.

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

22 *Writ of Replevin.*

The State of New Jersey to Nicholas P. Wedin, Sheriff of the County of Hudson, Greeting:

[L. S.]

We command you that if James L. O'Neill shall make you secure you cause to be taken and delivered to him the following goods: Consignment of hides received by the defendant Pennsylvania Railroad Company in Lighters 432 and 424, being part of the cargo of the Steamship El Oriente, which the Pennsylvania Railroad Company, body corporate, and Central Leather Company, a corporation, took and unjustly detains as is said; and that you summon the said Pennsylvania Railroad Company and Central Leather Company to answer the annexed complaint of James L. O'Neill in an action at law in the Hudson County Circuit Court, and that you notify them that unless they file their answers to said complaint with the Clerk of the said Hudson County Circuit Court at Jersey City within twenty days after service upon them of this writ and the annexed

complaint, the plaintiff may proceed with the suit and judgment may be entered against them.

Witness William H. Speer, Judge of the Hudson County Circuit Court, at Jersey City, this twenty-third day of January, A. D., Nineteen hundred and fourteen.

JOHN F. CROSBY, *Clerk.*

McDERMOTT & ENRIGHT, *Attorneys.*

23 *Complaint of O'Neill.*

(Filed February 6, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY and PENNSYLVANIA RAILROAD COMPANY, Defendants.

Action at Law. In Replevin.

Plaintiff resides in the Village of Hempstead, in the State of New York, and says that:

(1) On January 23rd, 1914, plaintiff was and ever since has been the owner of the following goods and chattels, to wit: Consignment of hides received by the defendant Pennsylvania Railroad Company in Lighters 432 and 424, being part of the cargo of the Steamship El Oriente, of the value of $15,000.

(2) On said date the plaintiff was and ever since has been lawfully entitled to the immediate possession of the same.

(3) On said date at or near Pier K, Harsimus Cove and in the Pennsylvania Railroad Company's yards in the City of Jersey City, Hudson County, New Jersey, the defendants wrongfully took said goods and chattels from the possession of the plaintiff, and ever since have wrongfully detained and still wrongfully detains the same.

(4) On January 23rd, 1914, the plaintiff demanded pos-
24 session of said goods and chattels from the defendants, and said demand was refused.

Plaintiff demands possession of said goods and chattels and Five thousand dollars damages for their detention.

McDERMOTT & ENRIGHT,
Attorneys for Plaintiff.

Answer as to O'Neill.

(Filed February 28, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiff

vs.

CENTRAL LEATHER COMPANY and PENNSYLVANIA RAILROAD COMPANY, Defendants.

The defendant, Central Leather Company, a corporation of the State of New Jersey, having its principal office at No. 15 Exchange Place, Jersey City, says in answer to the complaint of James L. O'Neill:

1. Paragraph one of the complaint is denied.
2. Paragraph two of the complaint is denied.
3. Paragraph three of the complaint is denied.
4. Paragraph four of the complaint is admitted.

By way of counter-claim:

1. This defendant at the time of the alleged taking was and still is the owner of so much of the goods and chattels mentioned in the complaint as were taken by the Sheriff of Hudson County, under the writ of replevin herein, and was entitled at that time to the immediate possession thereof, subject only to the rights of its bailee, the Pennsylvania Railroad Company, to whom it had delivered the same for shipment to various points. This defendant demands possession of the said goods and chattels and Ten Thousand Dollars ($10,000) damages.

EDWARDS & SMITH,
Attorneys of Defendant Central Leather Company.

Petition.

(Filed January 30, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiff,

vs.

PENNSYLVANIA RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

Petition.

To the Honorable Judges of the Circuit Court in and for the County of Hudson:

Your petitioner Henry A. Oetjen of Jersey City, Hudson County New Jersey, respectfully shows as follows:

1. That heretofore on January 23, 1914, James L. O'Neill sued a writ of replevin out of the Circuit Court in the above entitled action, commanding the Sheriff of Hudson County to replevy consignment of hides and skins received by Pennsylvania Railroad Com-
26 pany from the Steamship El Oriente, and did thereupon deliver to the Sheriff the statutory bond in the penal sum of $30,000 with sufficient surety.

2. Under said writ said Sheriff has seized and now holds merchandise answering to the description in said writ and the complaint annexed thereto, as follows:

A large quantity of dry hides now contained in Pennsylvania Railroad Barge No. —.

3. That plaintiff, James L. O'Neill, claims as assignee of Mexico Hide Company.

The cause of action of the plaintiff is based on the claim that Mexico Hide Company, Inc., purchased hides of the description set forth in the writ and complaint from M. M. Martinez & Company (a partnership composed of Manuel M. Martinez and Gregorio Canales); that M. M. Martinez & Company were then engaged in the business of dealers in hides at Torreon, Mexico, and that the hides in question were located at Torreon and shipped by M. M. Martinez & Company to Mexico Hide Company, Inc., and stolen in transit in the Republic of Mexico by armed bands of insurrectos against the existing Government of the Republic of Mexico.

4. Petitioner further shows that said firm of M. M. Martinez & Company were also the owners of certain other hides of the same general description as those consigned to Mexico Hide Company, which hides were unsold and remained the property of said firm of M. M. Martinez & Company, and that said firm in order to remove said property to a place of greater safety consigned the same to San Pedro, in the Republic of Mexico, and that said hides likewise were stolen in transit by the same or other bands of insurrectos.

27 That the hides seized under the writ of replevin in above suit and now in the possession of the Sheriff at the yard of the Pennsylvania Railroad Company as aforesaid, are in part the hides shipped by M. M. Martinez & Company from Torreon to San Pedro, and stolen as aforesaid, and are not wholly the hides shipped by M. M. Martinez & Company to Mexico Hide Company and stolen in transit as aforesaid.

5. That said firm of M. M. Martinez & Company, composed as aforesaid, has duly sold, assigned, transferred and set over unto your petitioner all of the hides aforesaid now held by said Sheriff under said writ of replevin, together with all rights of action with respect thereto, and the taking thereof.

6. Your petitioner, therefore, claims an interest in the subject of the above entitled action and claims that he is the true and lawful owner of part of said goods and chattels and entitled to the possession thereof not only as against the defendants Pennsylvania Railroad Company and Central Leather Company, but also against the plaintiff James L. O'Neill.

Petitioner further shows that his claim not only is to an interest in the subject matter of above action, but that his cause of action has a common question of law and fact with that of the plaintiff and arises out of the same transaction or series of transactions: The common question of law being the right of the insurrectos (who have never been recognized as belligerents under the law of Nations) to steal and confiscate said merchandise and make good title thereto, by sale to third parties. Further, said question grows out of the same transaction or series of transactions, namely attempted
28 seizures and confiscations by armed bands of insurrectos, acting in conjunction with each other, and under more or less organized leadership.

7. Petitioner further shows that a complete determination of the controversy between above plaintiff and defendants (which will involve a determination of the title and ownership of said chattels) cannot be had without the presence of your petitioner as assignee of M. M. Martinez & Company.

Petitioner further shows that he has an interest or title in the subject matter of above suit which the judgment will affect.

Petitioner, therefore, prays that he may be made a party plaintiff in the above entitled suit and that the original writ herein may be amended accordingly and that petitioner may have a reasonable time to be prescribed by the Court for filing and serving his complaint herein, and that petitioner may have such other relief as may be equitable and just.

McDERMOTT & ENRIGHT,
Attorneys of Petitioner.

STATE OF NEW JERSEY,
County of Hudson, ss:

Henry A. Oetjen, of full age, being duly sworn according to law on his oath says that he is the petitioner named in the within petition; that he has read the same and that the matters and things therein set forth are true as he is informed and verily believes.

That the allegations as to his cause of action and the ownership of the chattels described in the foregoing petition are based upon the statement of Manuel M. Martinez, who, deponent is informed and believes, is not only personally familiar with the circum-
29 stances surrounding the loss of his property, but has also inspected and identified the property now held by the Sheriff of Hudson County under the writ of replevin mentioned in the within petition.

Deponent holds in his possession a written instrument of assignment transferring to him all of the rights of M. M. Martinez & Company in the premises.

HENRY A. OETJEN.

Sworn and subscribed to before me this 30th day of January, 1914.

[L. S.]

ALICE M. BOYLE,
Notary Public of New Jersey.

30 *Order.*

(Filed January 30, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL, Plaintiff,

vs.

PENNSYLVANIA RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

On Petition, etc.

Order.

Upon reading and filing the petition of Henry A. Oetjen filed herein this day,

It is ordered that Henry A. Oetjen be added as a party plaintiff in the above entitled suit and that said Henry A. Oetjen file and serve a copy of his complaint upon the plaintiff and upon the defendants within ten days from the date hereof.

Further Ordered that the writ of replevin in *in* above cause be amended by adding the name of Henry A. Oetjen as a party plaintiff thereto.

Dated, January 30th, 1914.

Let above rule be entered in the minutes.

WM. H. SPEER, *Judge.*

31 *Complaint of Henry A. Oetjen.*

(Filed February 11, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL et al., Plaintiffs,

vs.

PENNSYLVANIA RAILROAD COMPANY and CENTRAL LEATHER COMPANY, Defendants.

1. On January 23, 1914, Manuel M. Martinez and Gregorio Canales, partners in trade doing business under the firm name of M. M. Martinez & Company, were and thereafter until the assignment to plaintiff Henry A. Oetjen, hereinafter noted, continued to be the owners of the following goods and chattels, to wit:

1250 dry hides, being a part of a consignment of hides received by the defendant Pennsylvania Railroad Company in lighters No.

432 and 424, and being a part of the cargo of the Steamship El Oriente.

2. On January 23, 1914, said firm of M. M. Martinez & Company was and ever since has been lawfully entitled to the immediate possession of the same.

3. On or about said January 23, 1914, said goods and chattels were unlawfully in the possession of defendant Central Leather Company, which Company did thereupon deliver the same to defendant Pennsylvania Railroad Company as a common carrier.

32 4. That on said date plaintiff James L. O'Neill as assignee of Mexico Hide Company did demand of said defendants the possession of said goods and chattels, claiming to own the same, and to be entitled to the possession thereof, and did thereupon cause the writ of replevin in this action to be sued out and said goods replevied by the Sheriff of the County of Hudson.

5. That thereafter on or about the 28th day of January, 1914, said M. M. Martinez & Company did in writing under seal duly sell, assign, transfer and set over unto plaintiff Henry A. Oetjen, said goods and chattels, together with all rights of action for the recovery of the same and damages for the detention thereof.

6. That thereafter on January 30, 1914, plaintiff did apply to the Court to be admitted as a party plaintiff in above action and the Court did thereupon make its order admitting plaintiff as a party plaintiff and amending the writ of replevin accordingly.

7. That the defendants wrongfully took and retained said goods and chattels from the possession of plaintiff's assignor at the yard of the Pennsylvania Railroad Company in Jersey City, New Jersey, on or about the 23rd day of January, 1914, until replevied from their possession by the original plaintiff herein and that plaintiff Henry A. Oetjen is the owner and entitled to the possession of said goods and chattels not only as against the defendants but the original plaintiff James L. O'Neill and his assignor, and the defendants have wrongfully detained and still wrongfully detain the same from plaintiff.

8. That said M. M. Martinez & Company were the lawful owners of said goods and chattels, together with other goods and chattels, at the City of Torreon in the Republic of Mexico, on or about

33 the twelfth day of October, 1913, and in possession thereof, and that said goods and chattels were thereafter at Torreon or some other place in the Republic of Mexico stolen from the possession of the said M. M. Martinez & Company, and thereafter unlawfully came into the possession of the defendant Central Leather Company and of the defendant Pennsylvania Railroad Company as common carrier for said Leather Company, at Jersey City, aforesaid.

Plaintiff demands possession of said goods and chattels, with damages for their detention, or in case they cannot be returned to the plaintiff, then $20,000 damages for their value and $5,000 damages for their detention.

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff Henry A. Oetjen.

Answer as to Oetjen.

(Filed March 3, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL et als., Plaintiffs,

vs.

CENTRAL LEATHER COMPANY and PENNSYLVANIA RAILROAD COMPANY, Defendants.

The defendant, Central Leather Company, a corporation of the State of New Jersey, having its principal office at No. 15 Exchange Place, Jersey City, says in answer to the complaint of Henry
34 A. Oetjen, who has been admitted as a party plaintiff in this action.

1. Paragraph one (1) of the complaint is denied.

2. Paragraph two (2) of the complaint is denied.

3. This defendant denies that on or about January 22, 1914, the goods and chattels described in the complaint were unlawfully in the possession of this defendant, but says that they were lawfully in its possession and that it had delivered the same or so much thereof as were taken by the Sheriff of Hudson County under the writ of replevin herein to the defendant, Pennsylvania Railroad Company as a common carrier for shipment.

4. Paragraph four (4) of the complaint is admitted except that it denies that James L. O'Neill was the assignee of Mexico Hide Company on January 22, 1914.

5. Paragraph five (5) of the complaint is denied.

6. Paragraph six (6) of the complaint is admitted, but this defendant will insist that the said Henry A. Oetjen is not a proper party plaintiff in this action and was improper*ly* and illegally made a party thereto.

7. Paragraph seven (7) of the complaint is denied.

8. Paragraph eight (8) of the complaint is denied.

By way of counter-claim:

This defendant at the time of the alleged taking was and still is the owner of so much of the goods and chattels mentioned in the complaint as were taken by the Sheriff of Hudson County, under the writ of replevin herein, and was entitled at that time to
35 the immediate possession thereof, subject only to the rights of its bailee, the Pennsylvania Railroad Company, to whom it had delivered the same for shipment to various points. This defendant demands possession of the said goods and chattels and Ten thousand dollars ($10,000) damages.

EDWARDS & SMITH,
Attorneys of Defendant Central Leather Company.

Rule for Judgment.

(Entered November 4, 1914.)

Hudson County Circuit Court.

JAMES L. O'NEILL and HENRY A. OETJEN, Plaintiffs,

vs.

CENTRAL LEATHER COMPANY and PENNSYLVANIA RAILROAD COMPANY, Defendants.

In Replevin.

Rule for Judgment.

This cause being regularly on the list for trial at the September Term, 1914, of this Court, and being called and both parties appearing, and the cause being moved by the plaintiffs, and a jury being empanelled and sworn, and the evidence offered by the parties submitted, and counsel for each party having requested the Court to direct a verdict in favor of their respective clients, and the respective parties by their counsel being heard, and the Court having charged the jury, and the jury having retired to consider of their
36 verdict come again into Court and by direction of the Court say that they find the defendants did not take the goods and chattels of the plaintiffs or either of them named in the plaintiffs' complaint in manner and form as the said plaintiffs have complained against the said defendants, and they find the goods and chattels therein named are the property of the defendants.

Therefore, it is considered that the plaintiffs and each of them take nothing by their writ, but that they and their pledges to prosecute be in mercy, etc., and that the defendants do go thereof without day, and that they have returned all the said goods and chattels due them to hold irrepleviable forever.

And it is further considered that the said defendants do recover against the said plaintiffs the sum of $37.11 for their costs and charges by the Court here adjudged; and that the defendants have execution therefor, &c.

Rule actually entered November 4th, 1914, on motion of Edwards & Smith, attorneys of Central Leather Company.

(Circuit Court Minutes, 39-435.)

37 *Testimony.*

Minutes of Trial, Tried October 26, 1914, Before Hon. Luther A. Campbell, Judge and a Jury.

Mr. Smith: If your Honor please, before the cases are moved or tried I desire to make a motion. I told Mr. Enright I would do so.

My motion in this case, if your Honor please, is to dismiss the complaint so far as the plaintiff Henry J. Oetjen is concerned, and also to set aside an order of Judge Speer, made on January 30, 1914, permitting Henry J. Oetjen to be made a party.

Mr. Enright: No proper notice of the motion having been given.

Mr. Smith: I set up in the answer that we should object at the trial.

Mr. Enright: Except what there may be in the answer there is no notice.

Mr. Smith: My motion is to dismiss the complaint of Oetjen and also to set aside the order of Judge Speer, admitting him as a party, on the ground that he had no authority so to do, that this man had absolutely no interest in this case; in other words it is not permitted under the Practice Act.

It is starting an entirely new action and without basis and without bond on the replevin. This bond in replevin was given by no one but O'Neill.

(Discussion.)

The Court: I am inclined to the belief, gentlemen, that the order as made by Judge Speer, should stand, and therefore the present motion is denied.

38 Mr. Smith: Will your Honor allow me an exception?
The Court: You may have your objection entered, yes.

A jury of twelve men was then drawn and sworn.

Stipulation.

Mr. Enright: It is stipulated by counsel for the respective parties that these two cases be tried together, and further that the causes proceed and be tried and determined as a controversy against the defendant Central Leather Company without regard to the nominal defendants Pennsylvania Railroad Company and the Erie Railroad Company.

The Court: Is that consented to by all parties?

Mr. Smith: That is consented to. Of course we waive none of our rights as to the question of the right of Oetjen to come in as plaintiff.

The Court: Oh, no; you reserved that by your motion.

Mr. Smith: I did not want them to be mistaken as to that.

Mr. Enright: My idea is that this trial will proceed as though these goods were replevied from the sole possession of the Central Leather Company.

Mr. Smith: That we have no objection to.

Counsel for the respective parties made their opening addresses to the jury.

39 PLAINTIFF'S TESTIMONY.

Deposition of Manuel M. Martinez.

Mr. Enright: I will read the deposition of Manuel M. Martinez taken de bene esse, before George R. Beach, Master in Chancery, February 6, 1914, pursuant to appropriate sections of the Evidence Act.

"Direct examination.

By Mr. Enright:

Q. What is your full name?
A. Manuel M. Martinez.
Q. Give your age and place of residence?
A. Forty-four years of age; Torreon, Coahuila, Mexico.
Q. What is your business?
A. Dealer in hides.
40-41 Q. How long have you been in that business?
A. Fifteen years.
Q. Are you now a dealer in your own name, or as a member of a partnership?
A. With a partner.
Q. Give the name of your firm?
A. M. M. Martinez & Co.
Q. And the name of your partner or partners in that firm?
A. Only one—who is Gregorio Canales.
Q. And how long have you been associated with Canales in that firm?
A. About ten years.
Q. Have you personally, had the sole charge of the business of the firm in Torreon?
A. Yes, sir.
Q. Where does Canales live?
A. He lives in Guardalajara, State of Jalisco.
Q. Did your firm have an office and also a warehouse, in Torreon throughout the past year?
A. Yes, sir.
Q. What was contained in that warehouse in September last?
A. It contained 2,457 hides——
Q. I do not think you understand the question; I was not asking you about the numbers, but generally to describe the property which was in the warehouse?
A. Hides, and goat skins; horse hair; fresh salted hides, and other merchandise.
42 Q. In how large quantities did you purchase these dry hides?
A. In large quantities.
Q. Well, how many hides would you ordinarily get from each person you purchased from?

A. Some would come in one hundred lots, and others in one hundred and fifty lots, and others in two hundred lots—different.

Q. Did you receive any of the dry hides by express?

A. Yes, sir.

Q. From what place?

A. From San Pedro, Coahuila.

Q. Now, as you acquired these dry hides were any of them marked in any way—addressed to you in any way by making on the hide?

A. Yes; sometimes the name would be written across the hides, and sometimes they would come with express tags. The name would be written in full across the hide sometimes—all the name across the hide.

Q. And by "all the name" what does that mean?

A. Well, "M. M. Martinez y Cia."

By Mr. Edwards:

Q. You mean your firm's name?

A. M. M. Martinez & Co.; and other times by express tags—they would be addressed on express tags.

By Mr. Enright:

Q. In those cases where the name M. M. Martinez & Co. was written on the hide itself, would it be on all of the hides, or simply on the top hide of the bundle?

A. They put them in packages and only the top one had the name written across.

By Mr. Edwards:

Q. That would be an address?

A. Yes, sir; the top one would be addressed. And at other times an express tag would be tied on to the top hide.

43-44 By Mr. Enright:

Q. When you got the dry hides in your firm did you put them in your warehouse?

A. Yes, sir.

Q. About how long had you been accumulating the hides which were in the warehouse on the 16th of September last?

A. 2,449 hides——

Q. Oh, no; I ask you about how long you had been accumulating the hides which were in your warehouse on the 16th of September last?

A. From June to September.

Q. Did you do anything with those hides—both the fresh and the dry ones—on or about the 16th of September last?

A. I put them on board freight cars.

Q. What happened about the 16th of September which induced you to take the hides from the warehouse and put them in cars?

A. The reason was that the superintendent of the railroads offered

me that in a caravan of Americans that were leaving for the United States he would send his cars through Eagle Pass, and I taking advantage of this opportunity, immediately so sent them.

Q. By "caravan" do you mean a railroad train?

A. By railroad, yes, with passengers.

Q. Well, was there anything which had happened about that time which made it dangerous to keep the hides longer in Torreon?

A. Yes.

Q. What was it?

A. That they were trying to attack the city.

Q. Who?

A. The Rebel forces.

Mr. Edwards (to the Interpreter): Did he say "rebel" now?

The Interpreter: Yes, "the Rebel forces."

Q. Did you personally superintend the loading of the hides out of the warehouse into the cars?

A. Yes, sir.

45–47 Q. Is "lasso" the same as rope?

A. These bundles were tied by cord, rope.

Q. Made out of Mexican hemp?

A. Yes.

The Interpreter: He calls it "yxtle"; he will write it down here, if you want it. (The witness then wrote upon a sheet of paper the word "yxtle.") He says it is a cord just like a rope. That is what the rope is made out of (referring to the written word "yxtle").

Q. It is the name of a plant, is it not?

A. No, this is the product of a plant.

Q. And the plant grows down in Mexico, does it?

A. Yes, sir.

Q. Did you have a supply of these ropes or cords on hand in the warehouse at the time you bundled these green or fresh salted hides?

A. Yes, sir, we had a lot of it there on hand.

Q. Now, as the salted hides were bundled up what was done with them?

A. They were weighed, the tags put on, and then sent, and we then sent them to the freight cars.

Q. Were they counted?

A. Yes, they were counted.

48 Q. Now, with the exception of the hides which you consigned to the Mexico Hide Company in June, had you ever marked any fresh salted hides shipped by you with a white rag before?

A. No, sir.

Q. Now describe how the dry hides were handled out of the warehouse into the cars on this occasion in September?

A. Placed in the cars, loose.

Q. Were they counted at the time of handling them out of the warehouse into the cars?

A. They were counted in the warehouse, and they were counted on board of the cars.

Q. Do you mean they had been counted in the warehouse before this date when you started loading into the cars, or do you mean that the counting in the warehouse was at the same time
49 of the transfer into the cars?

A. The very same day that the shipment was made they were counted in the warehouse.

Q. Did you have anything to do with the counting of the dry hides?

A. Yes, sir, to know the number of hides that went into the cars.

Q. Was a record made of the number of these dry hides?

A. Yes, sir.

Q. Made by you, or under your direction?

A. Made by me, personally.

Q. Where is that record now?

A. Why, they existed at that time, but they have been destroyed now.

Q. Destroyed by whom?

Mr. Edwards: Well, did he see them destroyed?

A. By the rebels.

Q. Did one of your men make a tally, also, at the time that the dry hides went into the cars?

A. Yes, sir.

Q. Were these dry hides weighed?

A. As they left the warehouse they were counted and weighed.

Q. And did this record which you kept yourself also have the weights?

A. It contained the weights and numbers.

Q. Did your man out at the cars, keep a tally of the weights that went into the cars?

A. Yes, sir.

Q. Were these dry hides marked in any way at the time you took them out from the warehouse into the cars?

A. Yes, sir.

Q. How were they marked?

A. They were marked with an "M" inside of a triangle.

Mr. Edwards: A "diamond."

The Interpreter: He says "call it whatever you say; it is like this (and the witness thereupon drew on a paper a sketch of
50 a diamond shape, with an "M" enclosed therein, which sketch is now marked J. M. E. 1)."

Mr. Enright: At this point I offer the witness' sketch and it is marked in evidence.

Mr. Platt: No objection.

The Court: It may be marked as Exhibit P-1.

Paper marked Exhibit P-1.

"Q. And with what substance was that marking put on the hide?

A. Black paint.

Q. Before this time had you ever marked dry hides in the same way?
A. No, sir.
Q. Will you give us the date when this loading from the warehouse into the cars was done?
A. 16th of September, of last year.
Q. Of 1913?
A. 1913.
Q. How long after that date did you continue in Torreon, yourself?
A. Until the 5th day of October.
Q. Had the cars left Torreon up to the time when you left on October 5th?
A. No, sir.
Q. Still there, were they?
A. They were still there, yet.
Q. What caused you to leave Torreon on the 5th of October?
A. I was afraid of the revolutionists—in fear of the revolutionists, in other words.

Mr. Edwards (to the Interpreter): He did not say which "revolution"? "In fear of a revolution" did he say?
The Interpreter: No,—"in fear of the revolutionists."

Q. In the meantime, had the revolutionists taken possession of the city?
A. Yes, the 1st day of October.
51 Q. When they took possession what, if anything, did they do to your dwelling house?

Mr. Edwards: He has not testified that he had a dwelling house, yet.
Mr. Enright: He said he lived there.

A. The very same night they broke in the door; they broke open the wardrobe where my clothes were, and they stole my clothing.
Q. How about the furniture?
A. The furniture was stolen a few days later.
Q. What happened to your office?
A. They took possession of the office; they broke open the safe,——

Mr. Edwards: Did he say the word "stolen" or "taken"?
The Interpreter: "Stolen,"—that they "stole his clothes."

A. (Resuming:) —and they destroyed all the papers; took out all of the office furniture, the typewriters, the books, and they broke open the safe.
Q. What was the last that you saw of the record which you made up there in the warehouse of the number of hides loaded into the cars on September 16th?
A. The 27th of September.
Q. I am asking you now about the books. Well, where was this book on the 27th of September?

A. In my office.

Q. Have you any reason to suppose that it was anywhere else than in the office at the time the rebels came?

52 "A. They were in that office until they were destroyed.

Q. They were in that office the last you saw them, any way, weren't they?

A. Yes.

Q. When did you next come back to Torreon after October 5th?

A. The 10th day of December.

Q. Another thing—after you loaded these hides and the horsehair from the warehouse into the cars on September 16th, did you put any more skins of any sort into the warehouse?

A. I still kept on purchasing after this shipment was made.

Q. Did you have some skins in the warehouse at the time the rebels came?

A. Yes, sir.

Q. Did the rebels do anything to your warehouse?

A. Yes.

Q. What did they do?

A. They took everything that it contained—wines (we had some wine there) and they took that, and took all the hides, and everything they could get hold of.

Q. Did they use the warehouse in any way?

A. Yes, sir.

Q. How?

A. As a barracks.

Q. Now, you came back to Torreon December 10th, you say?

A. Yes. December 10th.

Q. What had happened in the meantime so that you could get back?

A. In what way, do you mean?

Q. Well, I mean were the rebels still there when you came back?

A. On the 9th day they were dispersed or driven out.

53 Q. And you came back the next day, December 10th?

A. Yes sir.

Q. Were your carloads of hides in Torreon when you got back on December 10th?

A. No, they were not.

Q. Did you make inquiry of the railroad officials to find out what had become of them?

A. Yes, I did.

Q. Whom did you inquire of?

A. From the employees of the railroad company's office.

Q. Well, what did those employees tell you had become of the cars?

54 Q. Do you know the name of the man whom you made this inquiry of in Torreon?

A. No, I do not.

Q. What was his position?

A. I don't know.

Q. What sort of work was he doing?

A. He was in charge of the freight rates, you know.

Mr. Edwards: Of the freight office?

The Witness: Was he a man that he had known to have been there for a long time?

Q. Had you ever seen this man around the office before?

A. Never.

Q. He was there in the office and apparently doing work in the office, in the railroad office?

A. Working there, employed there; he was employed there.

Q. What sort of work was this man doing—this man in the railroad office?

A. He had been taken in that day to look after the office, on account of lack of employees; he probably was ordered by the Superintendent; he was taking note of everything going on there.

Mr. Edwards: Did he say he thought he had been "put there by the Government"?

Mr. Enright: He said he thought he had been put there by the Superintendent.

The Witness: By the Federals.

Q. When you made your inquiry did this man look up any records in the office?

A. He did; he looked up in his records.

Q. After looking up those records, what did he tell you about what had become of your cars"?

55 "A. That the cars had been sent to Santa Rosalia, Chihuahua, by order of the rebels.

Q. Did he tell you on what date the cars had been sent to Santa Rosalia?

A. This man in the freight office had the date there, but I didn't take it at that time—I don't remember, but, approximately, in the latter part of November.

Q. Do you know whether the railroad which goes from Torreon to Santa Rosalia continues on to Juarez?

A. It does, yes, sir.

Q. Now, while you were in Torreon, between the 1st and 5th of October, do you know whether the rebels broke in other places than your house and your office?

A. They continued robbing other places there—business houses, commercial houses.

Q. Did you, yourself, see any of the rebels carrying merchandise through the street?

A. Yes, I did. They went right by the house where I lived.

Q. Do you mean by that the house that was broken into by the rebels, or the house where you were staying after the rebels came?

A. Another house; for I immediately changed my residence.

Q. You were not in your own house at the time the rebels broke in, when they first came to the town, were you?

A. Only one employee, who was a caretaker, was there.

Q. You and your family left your own home, didn't you?
A. I left my house and went to a more modest home,—more obscure.
56 Q. What sort of merchandise did you see the rebels carrying through the streets?
A. Clothing—cloth in pieces—all merchandise of various sorts.
Q. Now when next did you see any of your hides?
A. I did not see them after that.
Q. In Mexico, do you mean or elsewhere?
A. In Mexico I did not see them any more; but I came to see them here in this country.
Q. In the meantime, did you sell any of these hides before coming to New York?
A. No.
Q. Did you give them away?
A. No.
Q. Did you do anything—before you signed the paper transferring to Oetjen—to part with your title or ownership in those hides?
A. Senor Oetjen?

Mr. Edwards: He never heard of Oetjen.
Mr. Enright: Yes, he did. Strike that question out.
Mr. Edwards: Oh, I object to that. I want that question there.
Mr. Platt (to the Interpreter): What did he say when you put the question to him? He said something back.
The Interpreter: He just made the remark "What Oetjen?"
Mr. Enright: Pronounced "Etjen." (Mr. Enright then wrote the name on a piece of paper and exhibited it to the witness.)
The Witness: Oh, that is the lawyer I had given the power of attorney. Is that what you asked?

Q. What I asked you is, up to the time that you came to New York had you done anything to part with your title or ownership
57 in these hides?
A. No. Before coming to New York? No, I did not do it.
—. ——.
A. I saw them in two different, two distinct localities. In the cars in the Erie I saw the fresh salted hides; in large barges or launches, or lighters, I saw the dry hides.

58 Recess.

Afternoon Session.

Mr. Platt: What page are you on?
Mr. Enright: Page 30.

"Q. Did you recognize any of your fresh salted hides?"
"A. I did.
59 Q. Was a count then made of the green hides which you claimed?

A. Yes, sir; they made a count.

Q. Now how many bundles were there which you identified on this Sunday?"

"A. 273.

Q. Did you open any of the bundles to see how many hides were contained in them?

A. Yes.

Q. Now, how many hides to a bundle were there in those bundles which you opened?

A. Each bundle contained two hides.

Q. From your experience, are you able to say positively that each one of those 273 bundles contained two hides?

A. Yes.

60-68 "Q. Were these 273 bundles, which you examined at the railroad yard, part of the hides which you loaded out of your warehouse into the cars at Torreon on or about September 16th?"

"A. Yes.

69-70 "Q. Did you examine the dry hides which were contained in cars at the Erie Railroad, Jersey City?

A. Yes, sir.

71 Q. Did you, yourself, make a count of the hides which you separated as belonging to you?

"A. Yes.

Q. Did you set aside any hides except those which had on them the letter M?

72 A. Those that had my mark went on one side, and those that did not have my mark went another.

By Mr. Edwards: And by "my mark" you mean the letter M in a diamond?

A. Yes.

By Mr. Enright:

Q. Did you find any of those hides which had your full name on?

A. Yes, sir.

Q. Just give your best recollection of what there was printed or painted on these hides, which you say had your name on?

A. "M. M. Martinez y Cia., Torreon."

Q. Did you find any of these dry hides which had an express tag on, bearing your name?

A. Yes, sir.

Q. I show you what purports to be an express tag, with words in Spanish, and ask you if that is such a tag as you found on some of these dry hides?

—. —.

Q. I ask you if that is one of the tags which you found on some of these dry hides?

A. Yes, sir.

73-75 (Express tag marked Exhibit P-6.)

76-77 Q. Did you personally inspect a lot of dry hides in a boat at the Pennsylvania Railroad, Jersey City?

A. All of the hides which were there.

Q. Were you able to recognize any of the hides which were in the boat at the Pennsylvania Railroad as the same hides which were loaded from your warehouse to the cars in Torreon, in September?

A. Yes.

78 Q. Who kept the tally of the hides which you separated at the Pennsylvania?

A. Mr. Cohn, and an employee, a policeman, I think.

Q. A sheriff?

A. A sheriff.

Q. Do you know the total number of dry hides which you identified as having come from your warehouse in Torreon, which you found at the Erie and at the Pennsylvania Railroads, Jersey City?

A. Yes.

Q. What is it?

A. (Referring to a note book.) 2443.

79 Q. Now, Mr. Martinez, do you know how many fresh salted hides there were in the lot which you loaded out of your warehouse into the cars in Torreon, September 16th, 1913?

A. Yes, sir.

Q. How many?

A. 300 bundles, with 600 hides.

Q. Do you know how many dry hides were loaded out of your warehouse into the cars at Torreon on the same date?

A. Yes, sir.

Q. How many?

A. 2449.

Q. Are you sure about those figures?

A. Yes, sir.

Q. Have you confirmed those figures in any way?

A. Yes, sir."

80 "Cross-examination.

By Mr. Edwards:

"Q. Are you a Mexican by birth, Mr. Martinez?

A. Yes, sir.

Q. Not a Spaniard?

A. No, sir.

Q. And how long have you lived in Torreon?

A. Fifteen years.

Q. And where did you live before you came to Torreon?

A. At General Trevino, State of Neuvo Leon.

Q. Is that in the south of Mexico?

A. It is on the border of the Rio Grande; it is in the north of Mexico.

Q. How large a city is Torreon?

A. Do you want the number of inhabitants?

Q. About?

A. 31,000 inhabitants.
Q. Is it a garrison town?
A. Yes.
Q. And how large a garrison of soldiers did they have there in September, 1913?
A. I don't know.
Q. About?
A. From the rumors that went around there, there was 2500.
Q. And they were the so-called Federal soldiers?
A. Yes, sir.
Q. And who was in command of the town?
A. Gen. Munguia.
Q. And these were the soldiers who were under the command of Huerta, who seized the Government there?

Mr. Enright: I object to the question, the part of it which describes Huerta as the one who seized the Government."

81 Q. Who seized the Government there, and killed Madero?

Mr. Enright: I object to the question, as assuming a fact not in evidence.

(Question repeated.)

Mr. Enright: If he knows who killed Madero.

A. I cannot give an explanation of that.
Q. Well, were they soldiers under the orders of Gen. Huerta?
A. Yes.
Q. And were you an adherent of the Huerta Government?"
"A. I do not mix in politics down there.
Q. Have you ever held any office in Mexico?
A. No.
Q. Never?
A. Yes, I had a position.
Q. What was that?
A. I was in charge of the Street Cleaning Department.
Q. Under the Huerta Government?
A. Under the Huerta administration—inspector of street cleaning.
Q. And an official, then, under the Huerta Government?"
"A. No, no; it was not a Government position. The Governor orders, or appoints an honest person in the community, some person of good reputation in the vicinity, to look after the cleaning.
Q. But that was under the Huerta Government?
A. Yes.
Q. Now then, when did the Constitutionalists start to attack Torreon?
A. The rebels.
Q. No, no, the Constitutionalists?
A. No, rebels.

82 Q. I ask you when did the Constitutionalists begin to attack Torreon?

A. They are rebels.

Q. I did not ask you "the rebels," I asked you when did the Constitutionalists, as they are called, commence the attack on Torreon?"

"A. They don't call them 'Constitutionalists' there; they call them rebels.

Q. What do they call them in Sonora?

A. I do not know.

Q. What do they call them in Chihuahua?

A. I judge the same.

Q. How many troops were there that came into Torreon at this time against the Federals?

A. I don't know.

Q. About how many soldiers?

A. They say there, 4000.

Q. More than there were Federals?

A. Yes, more than the Federals.

Q. And under whose command were these soldiers that attacked Torreon?

A. Various Generals.

Q. Well, which was the leading General?

A. Gen. Villa.

Q. And is that the Gen. Villa who is fighting under Gen. Carranza?

A. I don't know.

Q. You never heard of Gen. Carranza, did you?

A. Yes.

Q. Is he on the same side with Villa?

A. Yes.

Q. And he is the head of the opposition to the Federals?

A. I do not think that I should answer these questions; I am not authorized to mix into any political matters.

83 Q. Now, how long has this war been going on in Mexico; when did it begin—about when?

A. In March.

Q. Of what year?

A. 1913.

Q. Well, did the Federalist troops defend Torreon in September, 1913, when attacked by the Constitutionalists?

A. Against the rebels?

Q. Did they defend it?

A. Yes; they defended the City of Torreon.

Q. Was there a battle there?

A. Yes.

Q. And the Federalists were defeated?

A. Yes; they evacuated; they left there.

Q. Where did they go?

A. I don't know.

Q. To the south, or to the north?

A. They left the City, and I don't know where they went. I remained in the City.
Q. Weren't you there, and didn't you know the retreat took place to the south?
A. I don't know the course that they took. They left at night.
Q. How far did they go?
A. I don't know.
Q. Did Villa, and his army then occupy the town?
A. Yes.
Q. And what day did they enter?
A. The 1st of October.
Q. And did they take charge of the government of the town?
A. Yes.
Q. Did they continue you in office as Commissioner of Street Cleaning?
A. No.
84 Q. Did they appoint somebody in your place?
A. I don't know. I was not an employee then.
Q. Well, how long did you stay in Torreon?
A. After they were there?
Q. After the 1st of October how long did you stay in Torreon?
A. Five days.
Q. And during that time where were you in Torreon?
A. In a house.
Q. And the Villa troops were in the streets constantly?
A. Yes, sir.
Q. And took possession of everything?
A. Yes.
Q. Why did you go away on October 5th?
A. For fear.
Q. For fear of what?
A. Of what the rebels were doing there.
Q. Were you afraid of being arrested and shot?
A. Yes.
Q. Was your name on the list for that purpose?
A. I don't know.
Q. You thought it was, did you not, when you left?
A. Yes.
Q. You were one of the prominent men of the town, were you not?

Mr. Enright: We will admit that.

A. Yes.
Q. When you went away did you know that an order had been issued for the seizure of your property?
A. I didn't know, no.
Q. Have you ever heard it?
A. After.
Q. When did you hear it?
A. I don't remember.
Q. And by whom was that order issued—by Villa?

Mr. Enright: He said he did not know.

Q. Whom did you hear that order was issued by—Villa?"

85 Mr. Enright: I object to the question as not calling for anything within the knowledge of the witness; it must be immaterial, what he heard about it. Here was a man forced into hiding on the coming of the Rebel host.

The Court: It would be hearsay, would it not?

Mr. Platt: Yes, I think it would be, yes.

The Court: I will sustain the objection.

"Q. But you heard that they had confiscated it, did you not?

A. They did not confiscate it, they stole it.

Q. Who stole it,—Villa?

A. No, the rebels.

Q. Under command of Villa?

A. I judge so.

Q. And do you also judge, by his order?"

Mr. Enright: I object to what he judges.

Mr. Platt: It is cross examination. It is not important, your Honor.

The Court: I think I should sustain it, then.

"Q. You say that you heard that an order had been issued
86 for the seizure of your goods—whom did you hear had issued that order?"

"A. In the railroad I was informed that by order of the rebels they had taken away the cars to Santa Rosalia.

Q. And that that order had been given by Gen. Villa?

A. I don't know.

Q. Did you hear what officer had given the command?"

"A. No.

Q. Where did you go, from Torreon, on October 5th?

A. Outside from there, to another town.

Q. How far from Torreon?

A. Ten kilometers.

Q. Did you go over into the Federal lines?

A. No."

"Q. What was the name of the town you went to?

A. That was a ranch.

Q. And who was in possession there—the Federalists or the Constitutionalists?

A. The Rebels.

Q. Were you in concealment there?

A. No, I went around free there.

Q. You did not tell who you were, though, did you?

A. No.

87 Q. You were trying to keep out of the way?

A. I cannot decide that.

Q. When did you leave the town of Torreon—what day?

A. The 5th of October.

Q. And what time of the day?

A. Five o'clock in the afternoon.
Q. In disguise?
A. Yes, I was disguised. I first went to the barracks there, and they gave me my passport.
Q. In your own name?
A. In my own name.
Q. Why did you go in disguise, then?
A. After that I learned that they were again to assault the citizens there.
Q. Now explain the whole circumstances?
A. Later I heard that they were assaulting citizens there, and that is the reason I wanted to go; and I went out with my family, with different clothing—not good clothing.
Q. Dressed as peons?
A. Natural clothing, but not elegant clothing.
Q. Slipped out, dressed as poor people, do you mean?
A. Yes.
88 Q. Now was the property of other merchants in Torreon also seized by Gen. Villa?"
"A. No.
Q. Nobody else's goods seized but yours?

Mr. Enright: You asked him before "by Gen Villa."

Q. All right—nobody else's goods seized but yours?
A. Merchandise of houses, of clothing, was stolen from the stores.
Q. "Taken" or "stolen," do you mean?
A. Stolen. They opened the doors——
Q. (Interrupting.) For the use of the soldiers?
A. I judge so; I don't know.
Q. And were supplies also taken by the troops?"
"A. I don't know.
Q. Were horses taken by them?
A. Yes.
Q. Cattle?
A. I don't know.
Q. Food?
A. I cannot give details of that, because I do not know.
Q. They took possession of the whole town, did they not?
A. Yes.
89 Q. Were soldiers on guard all through the town?
A. I was outside; I don't know.
Q. Well, while you were in the town, from October 1st to October 5th?
A. I went out very little; I didn't take any notice.
Q. Well, from what little you did see, the soldiers were on guard through the streets, were they not?
A. I don't know. They paraded along the streets, but I did not know with what object.
Q. Did any of the Federalists parade during that time?
A. No.

Q. Where did Gen. Villa have his headquarters?
A. I don't know.
Q. Did he take possession of the town hall, the ayuntamiento?
A. I don't know.
Q. Well, where did he have his headquarters?
A. By reason of my having left there, with my family, I do not know where he had his headquarters.
Q. Hadn't you heard about that?"
"A. I don't want to say anything I am not sure of, if I don't know.
Q. Well, you know that Gen. Villa did establish headquarters somewhere in Torreon?
A. No.
Q. How long did he stay there with his troops?
A. Until the 9th of December.
Q. And remained in full command of the town up until that time?"
"A. I don't know; I was not there.
Q. When did you go back? What made you go back?
A. To Torreon?
Q. Yes.
A. The town was already pacified, and I considered myself guaranteed.
90 Q. How long had the Federalists been back before you came back?
A. I came the next day, the 10th.
Q. Did the Federal army then come in and take possession of the town on the 9th of December?
A. The 9th; and I came the 10th.
Q. Did they drive these Constitutionalists out, or did they leave?
A. They dispersed them—threw them out.
Q. Well, they left?
A. Yes.
Q. There was no fight then, when the Federalists came back?
A. Yes, there was.
Q. Well, then they retreated, they were not dispersed?
A. They threw them out.
Q. And did you become Street Inspector again?
A. No.
Q. You had enough of office holding?
A. I was never there on my own volition.
Q. What made you go back? Did you want to go back to Torreon, or were you compelled to?
A. I went on my own volition.
Q. How long did you stay in Torreon then?
A. That position that I had there was obligatory. I never asked for any position, and I did not want any position.
Q. When did you leave Torreon after going back there in December?
A. The 15th of December I left Torreon.
Q. Why did you leave the second time?

A. I did not want to stay there, because they stole all my furniture and my house, and destroyed the office.
Q. Wanted to get away from the scene of war?
A. I wanted to get away from the scene of war.
91 Q. During the time, from October 5th to December 9th, while Villa was in possession of Torreon, where did you remain?"

Mr. Houston: The objection is withdrawn.

"A. I have already told you—outside of the city.
Q. Always at this same ranch?
A. Yes.
Q. Well, now, when you left Torreon in December, where did you go?
A. To Monterey.
Q. When you left Torreon in October where did you get the passport from?
A. When I left Torreon the second time?
Q. No, the first time, I mean—October 5th?
A. From one of the Revolutionists, Aguirre Benavides.
Q. Was he an officer under Villa?
A. He was a general.
Q. He was a General under Villa?
A. Yes.
Q. Where did you go to get this passport?
A. I personally went; I got a carriage and went.
Q. Where?
A. Where I was.
Q. Where were you?
A. In a house of his brother.
Q. In a house of whose brother?
A. Of Gen. Benavides's brother.
Q. And did he come from Torreon?
A. Who?
Q. The General?
A. No; the house was abandoned by Gen. Benavides' brother.

The Interpreter (to Mr. Edwards): When you said, "Where did he go to get that passport?" he said, "I went to Gen. Bena-
92 vides." You said, "Where?" He said, "In his brother's house."

Q. And was Gen. Benavides then having charge of the giving of the passports?
A. Yes.
Q. Well, now, did this general know you personally?
A. Yes--well, perfectly.
Q. Have you got that passport now?
A. No, sir; if it is necessary I will send for it; I haven't got it here.
Q. Where is it?
A. I will send it from Monterey.

Q. Was it on a printed blank?

A. They gave me two passports; they gave me two; one, a personal passport for myself and family; and the other for the business house.

Q. And it was on a private form?

A. Yes.

Q. And issued by whom?

A. Issued by—signed by Gen. Benavides.

Q. What words were at the top of this passport?

A. It is preferable that I send for them.

Q. Was it headed "Republic of Mexico?"

A. No.

Q. Well, how was it headed?

A. "Brigada Saragosa."

Q. What is that?

A. Battalion, or Brigade Saragosa.

Q. Oh, a regiment?

A. Yes, sort of a regiment.

Q. I would like to have you give us, as near as you can, what this passport said?

A. It is preferable that you have it in your possession.

Q. Well, you may not be able to find it. We want you to give the best that you recollect.

A. All right; it is better that I should send it to you.

Q. Well, don't you remember? Can't you give it to us?

A. No; I don't want to say something that is not right.

93-94 Q. Did it have a seal on it?

A. No.

Q. Did you have to show that passport very often?

A. No; there was never anybody that asked me for it.

Q. Well, as you went out of the city did you show it?

A. No; nobody asked me, compelled me to show it.

Q. Have you got a passport now?

A. No.

Q. Not from Monterey?

A. What do you mean, now—in Mexico, to come here to the United States?

Q. Yes.

A. Yes.

Q. Let us see it?

A. It is in my valise, and probably will be here in a few minutes.

Q. Who is it from?

A. Some of the troops that were stationed in the way, coming.

Q. The same kind of a passport as you got from Benavides?

A. Oh, no.

Q. Well, now, Mr. Martinez, do you expect that passport here shortly?

A. Yes, sir.

95 Q. Well, where did you order the cars sent in September, 1913?

A. To San Pedro.

Q. Where is that?
A. By the Railroad Internacionale to Eagle Pass.
Q. And that is Eagle Pass in the United States?
A. Yes—and forwarded from Eagle Pass to New York.
Q. Did you get a bill of lading?
A. A gentleman who I commissioned to make the shipment received the bill of lading.
Q. Where are the bills of lading?
A. The same person who made the shipment has that in his possession.
Q. Who is that person?
A. Anastasio Chappa.
Q. Did you fill out a shipping order?
A. No.
Q. Was your friend authorized to make out a shipping order?
A. Yes.
Q. Why did somebody else ship them, and not yourself?
A. Because I was not in Torreon.
Q. Weren't you in Torreon in September?
A. The hides were not shipped in September.
Q. Well, they were put on board of the cars?
A. The hides were sent the 12th of October.
Q. I know, but they were put on the cars in September?
A. Yes.
Q. And delivered to the Railroad Company in September?
A. Not until October.
96 Q. Well, weren't they delivered to the railroad company in September?
A. No.
Q. They were on the cars of the railroad company in September?
A. Yes.
Q. Well, where were the cars of the railroad?
A. On a switch; these cars were on a switch of the warehouse of the Dobson Manufacturing Company.
Q. How far is that from your warehouse?
A. 100 metres.
Q. And how did you get them from your warehouse to this switch?
A. In carts—transports.
Q. Wagons?
A. Yes, wagons.
Q. And you delivered them to the railroad company?
A. No; I put watchmen there. I sealed my cars and had men there watching them.
Q. How many carloads were there?
A. Five cars.
Q. And were they consigned to anybody?
A. When they left Torreon?
Q. No, when you delivered them in September?
A. I was going to ship them to the Mexico Hide Company of New York.

Q. All of them?
A. Yes, all.
Q. Did you give directions to that effect to the railroad?
A. No; the railroad did not receive the shipment, on account of the railroad company being interrupted, that is, the railroad being interrupted.

Mr. Enright: They would not issue a bill of lading in September because the railroad was interrupted.

Q. Then you delivered the goods to the railroad, but got no bill of lading?
A. Not, until the 12th of October.
Q. Or, you put the goods in the possession of the railroad but got no bill of lading?
97 A. No. For that reason I put watchmen there, as the railroad at that time was not responsible for this stuff.
Q. Well, the cars were not on your property?
A. No; they were in that switch.
Q. Who gave you permission to put the hides into the cars?
A. The superintendent of the railroad company.
Q. And who was he?
A. Mr. Chick.
Q. And was that the man who had told you, beforehand, that he was going to send out a caravan of passengers?
A. Yes, sir.
Q. And it was after that he told you that you could put the goods in the cars?
A. Yes.
Q. And the railroad company put the cars there for that purpose?
A. Yes, sir.
Q. And you told them how many cars you needed?
A. Yes, sir.
Q. And they sent them there?
A. Yes, sir.
Q. And then what was the total amount of hides that you loaded upon each car?
A. (Producing a memorandum book and referring to it.) I don't know exactly what went in each car, but I can give you the total of the full shipment. There was three cars with dry hides.
Q. How many dry hides?
A. Three cars, with 2449 dry hides.
Q. Loose?
A. Loose.
Q. And all marked with the M in the diamond?
A. Yes, sir; and one car with 300 bundles of fresh salted hides; and one car with 113 bundles of goat skins, eleven bundles of pig skins, and six bundles with—I don't want to put the number, because I don't just remember—but about 300 calf skins. Do you want the numbers of the cars?
Q. Have you got the numbers of the cars?
A. Yes.

Q. Let us have the numbers of the cars?
98 A. The same cars that these things were shipped in.
Q. Yes. What were the numbers of the cars?"

Mr. Platt: Will your Honor take the numbers down on your notes?

"A. 8747, N. M.; 17496, C. M.; 12728, N. M.; 10693, N. M.; 17660, C. M.
Q. Now when did you finish the loading of the cars?
A. The 16th day of September.
Q. And at that time you had not made up your mind to whom you would send them?
A. Yes.
Q. To whom were you to send them?
A. To the Mexico Hide Company.
Q. All of them?
A. All of them.
Q. Dry and salt?
A. Yes.
Q. When was the last time that you saw those hides?
A. I saw them the 27th of September.
Q. Had you received a bill of lading for them yet?
A. Not as yet.
Q. Where were you on the 28th of September?
A. In my private house, in town.
Q. And where, on the 29th of September?
A. That was the date that I changed residence.
Q. Changed residence on the 29th?
A. Yes.
Q. When did the assault begin on the town?
A. The 30th.
Q. Well, you never saw the cars after the 27th then?
A. No, sir.
Q. Well, whom did you give your shipping orders to?
A. To Mr. Anastacio Chappa.
Q. Who was he?
A. He is the gentleman from San Pedro.
Q. A dealer in these goods?
A. No, he is of my family, a member of my family.
Q. What relation is he to you?
A. He is married with a sister of my wife.
99 Q. Well, did you give him any transfer of the hides?
A. No, I just asked him to take charge of them; that I was going to leave.
Q. Well, how long did Anastacio stay in the town?
A. He was a travelling man; he was in Torreon; he travelled about.
Q. And was he friendly with Villa?
A. I don't know.
Q. Was he a Federalist?
A. He is an independent man.

Q. Was he an adherent of the rebels, as you call them?
A. I cannot assure you of that.
Q. Why did you have him do this work, rather than do it yourself?
A. He was a poor man, that didn't have anything else to do, and I gave the business over to him. He did not mix with anybody there; he was independent.
Q. Did you make a bill of sale to Anastacio?
A. No, no.
Q. Well, where is Anastacio now?
A. In Durango I don't know exactly.
Q. But you think he is in Durango; is that in the Constitutional or the Federal lines now?
A. The Constitutionalists'—the Rebels'.
"Q. What authority did you give to Anastacio?
A. That he should take them to San Pedro, with the object that, as soon as the railroad communications were continued, to
100 send them to the United States.
Q. Now, where is San Pedro?
A. On the line of the Internacional.
Q. Toward Vera Cruz, or the other way?
A. No, via the north—to the north, rather.
Q. Toward Eagle Pass?
A. Toward Eagle Pass.
Q. And the United States?
A. And the United States.
Q. Did you notify the railroad people in Torreon that you had put them in charge of Anastacio?
A. No.
Q. You simply abandoned them to Anastacio?"
"A. I begged him to make the shipment; and the railroad people accepted it because it was not shipped under anybody's name.
Q. It was not shipped under any name?
A. As the cars had not been received by the railroad people, the shipment was made to San Pedro.
Q. Under whose name?
A. Anastacio Chappa's.
Q. Who got the bill of lading?
A. Anastacio Chappa.
Q. What authority did he have to take the bill of lading?
A. The authority of Mr. Martinez, as proprietor.
Q. In writing?
A. No.
Q. Did you give any notice to the railroad of this authority?
A. No.
Q. Did you see the superintendent of the railroad about it?
A. No.
Q. Where is the bill of lading?
A. It is in possession of Anastacio Chappa, as I have stated.
Q. Haven't you got it now?
A. No.

Q. Did you ever see it?
A. No. You refer to the bill of lading?
101 Q. The bill of lading, yes.
A. No.
Q. Who paid the freight?
A. Mr. Chappa paid it.
Q. Where did he get the money?
A. He received the money from somebody there in Torreon.
Q. From whom?
A. I don't know. He got the money; he acquired the money.
Q. Well, on whose credit?
A. I don't know; it was his money; I was not in Torreon.
Q. You say he was a poor man?
A. He was a poor man, but he don't lack $200.
Q. How much was the freight?
A. $280 Mexican money.
Q. Well, what was the reason that the railroad company was willing to issue a bill of lading to Anastacio, and not to you, when they knew that they were your goods?
A. I don't know.
Q. Now, Mr. Martinez, did Anastacio ever report to you what he had done with these hides?
A. No. I gave him the instructions.
Q. Have you ever seen him since you gave him the instructions?
A. No.
Q. Have you had any correspondence with him?
A. No.
Q. Well, now, Mr. Martinez, you say, on your direct examination, that the Villa Government took these hides—how do you know that?

Mr. Enright: He did not say that; he said "the rebels."

Q. Well, that the rebels (which we term the Villa Government) took the hides?

Mr. Enright: He did not say that.
Mr. Edwards: Well, which I term "the Villa Government."
Mr. Enright: Well, do not attribute it to him.
Mr. Edwards: I am going to ask him.

102 Q. That the Villa Government took the hides—how do you know that?
"A. By the employees of the railroad.
Q. You have no direct information of your own on the subject, except what has been told you by this employee of the railroad?
A. No. I heard it. I went there to ask.
Q. And that is the only way you knew about it?
A. "The hides were taken to Santa Rosalia," he says, "by order of the rebels"—had been taken to Santa Rosalia.
Q. Did he show you any paper to that effect?
A. Yes, sir.
Q. You don't know who this man was?

A. No, he was an employee of the railroad. He may have been agent.

Q. You don't know who he was?

A. No.

Q. He had a paper there, though, that showed that the Villa people had taken the hides?

A. No, that by order of the rebels the cars were taken from San Pedro to Torreon, and then taken to Santa Rosalia.

Q. Where is that last place?

A. In the State of Chihuahua.

By Mr. Enright:

Q. It is on the way to Juarez?

A. On the road to El Paso.

103 By Mr. Edwards:

Q. But, as far as you were informed, they were taken to Santa Rosalia, in Chihauhua?

A. Only to Santa Rosalia.

Q. They were sent first to San Pedro?

A. Yes.

Q. And then returned to Torreon?

A. Yes.

Q. In the same cars?

A. In the same cars.

Q. And from there to Santa Rosalia?

A. Yes, to Santa Rosalia.

Q. And that is all you know about it?

A. That is all I know.

Q. You don't know what became of them at Santa Rosalia, do you?

A. No.

Q. How far is San Pedro from Torreon?

A. 64 kilometres.

Q. That is about fifty American miles—not quite that, about forty-eight. And when were they taken to San Pedro, were you informed?

A. I don't know exactly, but it was about in the last days of November, the latter part of November.

Q. Left Torreon for San Pedro?

A. No, from San Pedro to Torreon, in return.

Q. Well, when were you informed that they went from Torreon to San Pedro?

A. I don't know.

Q. Now then, when were they sent from San Pedro back to Torreon?"

"A. He did not return them.

Q. But he did send them to San Pedro?

A. The Revolutionists were the ones that sent them to Torreon.

Q. Who sent them to San Pedro?

A. Chappa.
Q. On what date?
A. I don't know.
Q. And who sent them from San Pedro to Santa Rosalia,
104 as this man told you?
A. By order of the Revolutionists. They were in possession of the line.
Q. Were they in possession of both of these railroads?
A. Of both.
Q. And were running them?
A. Yes.
Q. And they were in possession of San Pedro?
A. Also.
Q. And of Torreon?
A. Yes.
Q. And of Santa Rosalia?
A. Yes.
Q. And of the State of Chihuahua?
A. I don't know.
Q. And of Sonora?
A. I don't know.
Q. In what State is San Pedro?
A. Coahuila.
Q. And Torreon?
A. Coahuila.
Q. And they were in possession of that State, then?"
"A. Of that line—no more than that line.
Q. Don't you know they were in possession of the rest of the State of Coahuila?
A. No, not of the rest.
Q. You mean you do not know?
A. No, they only had possession of San Pedro and Torreon.
Q. Who had possession of the country between those two places?
A. The Revolutionists.
Q. Now, Mr. Martinez, were not the Revolutionists in the possession of the whole of the southern part of Coahuila?"
"A. No.
Q. Torreon is in the southern part of Coahuila, is it not?
A. On the edge.
Q. Well, on the southwestern edge?
A. It is near Durango.
105–13 Q. Well, it is on the southwestern edge of Coahuila?
A. To the west.

The Interpreter: I asked him whether it was southwest; "no," he says, "it is west."

114 Q. Now, you own these hides still, do you not, Mr. Martinez?
A. Yes, I think so.
Q. You think you do? You have not been paid for them by anybody, have you? Has any one paid you for these hides?

A. No.

115 Q. Has the Mexico Hide Company paid you anything for them?

A. No.

Q. Has Mr. O'Neill paid you anything for them?

A. He is taking charge of my matter.

Q. Who is Mr. O'Neill?

A. He is a lawyer.

Q. Well, you have not sold the hides to Mr. O'Neill, have you?

A. (Consulting a book.) No.

Q. Has he paid you anything for them?"

Mr. Enright: I submit that is not material at all. You have the legal title in the plaintiff by assignment; whether it was a gift or payment or whatnot does not make any difference.

Mr. Platt: We raise the issue whether he owns the hides, and I asked him my question, and that is subject to your Honor's passing on the objection at the same time.

The Court: Where is this assignment? Is it attached to any pleadings?

Mr. Platt: No, sir.

Mr. Enright: I will offer it now, if you please.

Mr. Platt: We will assume it is—or is it a bill of sale?

Mr. Enright hands the paper to the court.

Mr. Smith: Isn't that attached to the pleadings?

The Court: I don't know.

Mr. Platt: We have never seen that, have we?

Mr. Houston: I think I gave you a copy of both.

Mr. Enright: The consideration is recited.

The Court: The assignment under seal.

(Side bar discussion.)

The Court: I will sustain the objection.

Mr. Platt: Following that, on page 117 of the deposition,

116–22 appears the question: "Has Mr. Henry A. Oetjen paid you anything for them? Mr. Houston: Same objection."

That is to say, it is objected to as immaterial what consideration passed.

The Court: I will sustain the objection. To which ruling he wishes to enter an objection.

Mr. Platt: Exception.

The Court: We call it objection in this state now.

Mr. Platt: And the answer was not read to the question.

"Q. And you still own the hides?"

"A. Yes, sir.

Q. All of them?

A. All of them.

Q. And no one else has any real interest in them, except you and your firm?

A. Yes, I have given power of attorney.
Q. Power of attorney, only?
A. Wait a minute——"

Mr. Platt: Then there is a colloquy on page 118 running over to page 119, which was stricken out, and then there was re-direct examination by Mr. Enright.

Mr. Enright read the re-direct examination as follows, on page 119:

"Redirect examination.

By Mr. Enright:

Q. Have you transferred the title to these hides, after coming to New York, to Oetjen for the purpose of representing you in the suit?
A. Yes, sir.
"Q. And you signed a written assignment to that effect, didn't you—a written paper?
A. Yes, sir."

123 IRA COHEN, sworn.

Direct examination.

By Mr. Enright:

Q. Mr. Cohen, did you take a tally of the green salted hides and the dry hides which were identified by Mr. Martinez?
A. Yes, sir.
Q. And claimed by him both at the Erie Railroad Company and the Pennsylvania Railroad Company last—when was it, January?
A. Yes.
124 Q. Just tell us how many bundles of green salted hides were claimed by Martinez and sorted out?
A. Two hundred and seventy-three.
Q. How many hides were sorted out and claimed by Martinez as his at the Erie?
A. One car we found five hundred and sixty-four, another
125 car we found five hundred and twelve, another car one hundred and seventeen, that was one thousand one hundred and ninety-three (1,193).

By the Court:

Q. Is that at the Erie?
A. At the Erie.

By Mr. Enright:

Q. Did you examine a great many more dry hides than that at the Erie; I mean was there a large number at the Erie that Martinez did not claim as his?

A. Oh, yes.
Q. Both of green hides and dry hides?
A. Both green and dry.
Q. How many hides did he identify as his at the Pennsylvania?

Mr. Platt: I object. I do not object to your using the word "claimed."

Q. All right; how many——

The Court: You adopt the suggestion?
Mr. Enright: Yes.

A. 1,250.

By the Court:

Q. How many?
—. 1,250.

By Mr. Enright:

126 Q. Do you know the amount of the expenses incurred in making this identification?

127 The Court: I do not have to rule on that yet. I will take it that way. The objection may stand and I will permit the answer, subject to it being struck out, unless it is shown to me that it is proper evidence to be used in estimating the damages.
Mr. Platt: The same may apply to the questions along this line without making further detailed objections?
The Court: Yes.

(Question repeated.)

Q. By that I mean the moneys paid to the laborers.
A. The expenses I made out to cash here amount to about one hundred and twenty dollars, of which probably ten to twelve dollars must be deducted for other expense, you see, incurred in lunch with Mr. Martinez, and so forth.

128–29 By the Court:

Q. So that it would be about one hundred and ten dollars?
A. Actual labor about one hundred and eight to one hundred and ten dollars.

By Mr. Enright:

Q. Now that was made up in part—you had laborers there, hadn't you?
A. Yes.
Q. These laborers were employed in doing the heavy work of separating the hides claimed by Martinez from the other hides?
A. Yes.

130 Mr. Enright: I offer in evidence the assignment from Manuel M. Martinez & Co., to Henry A. Oetjen. We have the subscribing witness here if you want it proved.

Mr. Platt: We do not object, if the court please, to the form of this paper, or raise any question as to its being the paper, such a paper as it purports to be, but we do desire to put on record the same objection that was made on the opening of the case as
131 to the motion to dismiss the complaint as to Oetjen, on the ground that Oetjen is not a proper party plaintiff, and it is for that reason immaterial and irrelevant to the case, raising the same objection that we undertook to raise by the motion.

The Court: You have that reservation or exception, Mr. Kelley. There being no other objection I will overrule that. The paper may be marked.

(Paper marked Exhibit P-9.)

132 *Stipulation.*

Mr. Enright: I offer two stipulations as to value: First, in the suit against the Pennsylvania and the Central Leather Company, it is hereby agreed that the fair market value of the hides replevined in this case, either in the State of New Jersey or New York, during the months of January and February, 1914, which times and places cover the entire period of possession of the defendants, was seven thousand four hundred and ninety-three dollars, subject to objection as to relevancy.

I also offer a similar stipulation against the Erie and the Central Leather Company, namely, it is hereby agreed that the fair
133 market value of the hides replevined in this case, either in the State of New Jersey or New York, during the months of January and February, 1914, which times and places cover the entire period of possession by the defendant, was eleven thousand and ten dollars and eighty-three cents, subject to objection as to relevancy.

Mr. Platt: The objection is to their relevancy. If the court please, this raises the question of measure of damages in this case. If the measure of damages is to be the value at the time, that is at the time that they were rebonded, why, I take it that those stipulations are material. We stipulated the value here in New Jersey at the time they were bonded, and it covers all of the time that they were here in the State of New Jersey up to the time they were bonded. There is no difference in the value, the value does not change in the State of New Jersey during that time. But we raise the question as to whether or not it is that value which does measure the damage in this case, and I say for that reason that they are not relevant.

(Discussion.)

Adjourned to October 20, 1914, at 10 A. M.

134 October 20, 1914—10 A. M.

(The discussion on the motion continued.)

The Court: The position I will take, gentlemen, is that I will overrule the objection and permit the offer.

Mr. Smith: We ask an exception.

The Court: You may have your objection entered.

Mr. Enright: I now offer in evidence, the defendant waiving formal proof, the receipt for money paid by the plaintiff to the Pennsylvania Railroad Company for demurrage upon the chattels in question during the period when they remained in the possession of the sheriff. The amount of these payments to the Pennsylvania Railroad Company, after deducting the amount of a refund made by the Central Leather Company on goods that are not involved in this controversy at all, is $102.50.

I likewise offer under the same stipulation, the defendant waiving formal proof, receipt for payment made to the Erie Railroad Company of a like character, of $26.40.

I also offer to prove, under this same agreement, defendant waiving formal proof, the charges of the Sheriff of Hudson County, for keepers' fees, watching the chattels in the custody of the sheriff before their surrender on the re-bond to the defendant, amounting to $414.

Mr. Platt: I object to the admission of those as irrelevant, immaterial and incompetent, and I will take Mr. Enright's statement if the court admits them.

135 (Discussion.)

The Court: Well, in view of the position I took, gentlemen, regarding the law of the measure of damages in this case, I am inclined to, and I do sustain the objection to the offer upon the part of the plaintiff as to the items of demurrage of the Pennsylvania Railroad, $102.50, the Erie Railroad, $26.40, and sheriff's fees, $414. That disposes of the present matter, to which you wish to enter your objection?

Mr. Enright: I so object.

The Court: As to the other matters, the cost of identification, what position is that in? As I remember it it was admitted over objection, subject to being stricken out later unless I became satisfied that it was a proper item. That is my recollection of it. Is that practically true?

Mr. Enright: Yes.

The Court: Is there anything further you have to offer upon that item?

Mr. Enright: I will clear up that proof perhaps.

The Court: I think you ought to, because there is some question as to whether or not it is even chargeable if competent.

136–39 IRA COHEN, recalled.

Direct examination.

By Mr. Enright:

Q. Mr. Cohen, have you this morning the details of the charges for identifying these goods which you testified yesterday were approximately one hundred and ten dollars?

A. Yes, sir.

Q. Are these items charged against Martinez in the Mexico Hide Company?

A. They are through our books.

Q. Your company is buying hides from Mr. Martinez all the time, isn't it?

A. Yes.

Q. Have a running account?

A. Yes.

140 (Testimony repeated by stenographer.)

The Court: Then the ruling of the court is on the first motion that the testimony recently given by this witness be stricken out, as well as that testimony previously given by him upon the same point, to all of which Mr. Enright asks to have his objection entered.

Mr. Enright: I offer the following interrogatory and answer, being designated as the 19th interrogatory, in each suit.

"19th Interrogatory: Give the date or dates on which your company, or any one acting for it, acquired possession of said hides and the place where said possession was acquired by you or any one for you and the source from which said possession was acquired.

"Answer to 19th Interrogatory. The Central Leather Company acquired possession of said hides from the Finnigan-Brown Company at Pier 50, North River, New York City, on or about January 20, 1914."

Plaintiff rests.

141 *Motion to Non-suit.*

Mr. Platt: May it please the court, we move for the direction of a non-suit in this case on the following grounds.

I will say preliminarily, that in making this motion we are assuming for the purposes of this motion—indeed we have not even questioned—that the hides that were seized by the sheriff under the writs of replevin in these two cases at the Pennsylvania station and at the Erie station, were the hides or part of the hides—among the hides—that were seized at San Pedro; in other words, we are eliminating from the motion, the question of the identity of the hides, in that respect.

Now, the first ground is that it appears from the plaintiff's evidence that the plaintiff O'Neill has never had any title to the hides in suit, and we claim that the suits should be dismissed not only on

that ground, but that in any event, O'Neill should be dismissed from the case.

The Court: Your first motion is a motion to non-suit directed to the plaintiff O'Neill, on the ground there has been no proof in this case as to his right of property or right of possession at all as to any of the hides?

Mr. Platt: Yes.

The Court: Let me stop you right there. Has there been any such proof in the case, Mr. Enright?

Mr. Enright: No, sir.

The Court: Have you anything to say right now as against that motion, as to that one plaintiff, as to why the motion to nonsuit should not prevail as to him?

Mr. Enright: All I have to say as to that is that I do not think that is a motion that lies in the mouth of the defendant at all. If a judgment is going against the defendant, it is immaterial whether it is to the two plaintiffs jointly or to one of them. It is undoubtedly open to the co-plaintiff, Oetjen, to object to any judgment which recognizes O'Neill as having any share in it, but here, you see——

The Court: Here, Mr. Enright, the position is this. I do not remember of there being a scintilla of proof or an attempt at any proof to show right of possession of the plaintiff O'Neill. In other words, if he is standing alone in this action, it would seem to me that the motion to non-suit would prevail under the present circumstances. Is there any difference, because there happens to be another plaintiff, who does not claim through O'Neill at all, whose title, if he has one or did have one, is not dependent on the other, and as they are applying in favor of O'Neill should not the motion in favor of O'Neill prevail?

Mr. Enright: I think, undoubtedly, it should prevail if Oetjen made it."

We further move on the ground it appears from the plaintiff's evidence that the plaintiff Oetjen never acquired any title to the hides in suit.

We move further on the ground that the admission of the plaintiff Oetjen as a party herein was irregular, invalid and void; that he was not a proper party—the same question, that is all.

We move further on the ground that the plaintiffs have given no evidence of value on which to base any recovery here.

Now, if your Honor please, passing these, we move further——

Mr. Enright: Before passing those, as to one of them we will cure that by moving to the court now to add M. M. Martinez & Company as a co-plaintiff with the others. The court, under the
142 Practice Act, has the power at any time to add parties or drop parties so as to serve the ends of justice, and if there is any claim here that the assignment of M. M. Martinez to Oetjen has been ineffective or is not complete, I make that motion so as to prevent a defeat of the ends of justice.

Mr. Smith: We object to that, sir, to making Mr. Martinez a party to the case at this time. The case is tried, the plaintiff's case is in,

and he has not been made a party. I do not think that the court has authority to add a party at this time as a party plaintiff in this suit, and it would come under the same objection we would make to Oetjen appearing as a plaintiff.

Mr. Platt: Further, if Mr. Martinez were to be made a party what would be his allegation and what would be the issue and what would be his bond?

Mr. Enright: In all respects he would be in the same position as Oetjen.

The Court: Let me have all the motions and then we will take them up in their order.

Mr. Platt: We also move, if the court please, on the ground that at the time of the seizure of the goods in suit in Mexico a state of civil war existed in Mexico between the Federal or Heurtists, and the Constitutionalists under Carranza; that the seizure was an act of legitimate warfare; that the acts of the soldiers in making the seizure was presumptively done by the authority of the government; it was an act within the inherent right to confiscate the property of enemies, and within the right to impose a tax or levy for military purposes; it was an act of the Constitutionalist Government, and that its
143 validity cannot be questioned in the courts of this country.

As to the historical fact that a state of civil war existed in Mexico, as to the establishment of the Constitutional Government, these are facts of common and general knowledge and historical knowledge, of which the court takes judicial knowledge. They are also established by the acts of our own government, of which the court takes judicial notice, and it may inform itself, and I will give those to you in the course of the argument, the facts on which this motion is based are also established by the plaintiff's evidence in this case.

(Argues.)

Mr. Enright: If the court please, in the first place, I think, so as to avoid any further objection to this assignment, which objection does not go to the merit at all, we should be permitted to add Manuel M. Martinez and his partner, Gregorio Canales as parties to this action. (Cites sections 7, 8 and 9 of the new Practice Act.) In order that there may not be any failure of justice I ask the amendment.

The Court: You are asking that right by some provision of the Practice Act?

Mr. Enright: Yes, sir.

The Court: Will you read me that provision? That is aside from all consideration as to whether it is in the judgment of the court or whether it is a matter of right.

Mr. Enright: The section I invoke is one addressed to the discretion of the court, section 9, the concluding part:

"New parties may be added and parties misjoined may be dropped, by order of the court, at any stage of the cause, as the ends of justice may require."

And the concluding part of section 8:

"Where a person, not a party, has an interest or title, which the judgment will affect, the court, on his application, shall direct him to be made a party." I do not think that is necessary, because I make the motion more out of abundance of caution than anything else, because section 7 of the Practice Act provides: "An executor, administrator, or trustee, of an express trust (Including one with whom a contract is made more for the benefit of another) may sue or be sued without joining the persons beneficially interested in the suit."

"Without having this case turn on a narrow technicality, it seems to me there can be no possible objection. No new issue is raised in any way, and I do not think it necessary; I do not think the question really involves as to the sufficiency of this assignment——

The Court: Let me ask you, Mr. Platt, suppose, in the exercise of a discretion which the statute referred to seems to give me, if I exercised that in favor of the motion as made, that is, to add the real plaintiff, how would that in any manner jeopardize, at this time, the interest of the defendant at the trial?

Mr. Platt: I suppose we are here to try certain issues raised by these pleadings. I must say I am at a loss to know just how we do stand here. We have a complaint by O'Neill, in which he says he owns the goods, and that is denied, and we have a complaint by Oetjen in which he says he owns the goods, and that is denied. Now it seems to me that if Mr. Martinez is to be made a party, the first thing that would have to be done would be to determine that the issue is, they would have to tender us something in which we would have to raise an issue. Is Martinez coming in either under the O'Neill complaint or under the Oetjen complaint, or what is he going to do?

Mr. Enright: Under the Oetjen complaint."

The Court: I have your motion and I will decide all at one and the same time. For the purposes of your amendment you do not need the substitution to be made now?

Mr. Enright: No, sir; except that that was one of the points urged on the non-suit, that Oetjen was not the beneficial owner of the cause of action.

(Mr. Enright argues on the motion to non-suit.)

Adjourned to October 21, 1914, 10 A. M.

144 Jersey City, N. J., October 21, 1914, trial of the cause resumed at 10 A. M.

(Further discussion.)

The Court: I believe there were five grounds of non-suit urged. The first was:

"That it appears from the plaintiff's evidence that the plaintiff O'Neill has never had any title to the hides in suit, and we claim not only that the suit should be dismissed on that ground, but that, in any event, O'Neill should be dismissed from the case."

I will decline to non-suit upon that ground.

"It is contended that the plaintiff Oetjen was entitled to have the right, ownership and possession of the hides in question settled as amongst all parties to the action, namely, the defendant Central Leather Company, the plaintiff O'Neill, and himself, and that a non-suit would deprive him of that right." Refusal to non-suit, can, in my judgment, work no harm or injury to the defendant at this time. At the conclusion of the entire case, the condition of the evidence remaining as now, a motion to direct a verdict as against the plaintiff O'Neill will serve the same purpose of the defendant, and preserve the rights *of* any, the plaintiff Oetjen would have."

"Second. We move further on the ground it appears from the plaintiff's evidence that the plaintiff Oetjen never acquired any title to the hides in suit."

This motion is denied, on the ground that the assignment
145 from M. M. Martinez & Company to the plaintiff Oetjen, in evidence in the case, clothed him with sufficient title under the Practice Act to maintain the action.

I will at this time treat also of the request of the plaintiff, made after the close of his case, to add as plaintiffs M. M. Martinez & Company, because that bears a close relation to this ground urged for non-suit. I will deny that motion for the same reason as I have stated in the denial of the motion for non-suit.

"Third. Further on the ground that the admission of the plaintiff Oetjen as a party plaintiff herein, was irregular, invalid and void; that he was not a proper party—The same question, that is all."

That, again, I deny for the reasons advanced by the court at and during the argument at this point in the preliminary application at the opening of the case; in other words, it is not necessary for me to state any further reasons than were stated at that time for denying that preliminary motion.

"Fourth. We move further on the ground that the plaintiffs have given no evidence of value on which to base any recovery here."

I deny that motion. It is unnecessary to state any reason for the court's refusal other than to refer to the court's rulings on that branch of the testimony.

"Fifth. We also move, if the court please, on the ground, that at the time of the seizure of the goods in suit in Mexico a state of civil war existed in Mexico between the Federals and Huertists and
146 the Constitutionalists under Carranza; that the seizure was an act of legitimate warfare; that the acts of the soldiers in making the seizure was presumptively done by authority of the government; it was an act within the inherent right to confiscate the property of enemies and within the right to impose a tax or levy for military purposes; it was an act of the Constitutionalist government and that its validity cannot be questioned in the courts of this country."

The question is a political and not a judicial one. To sustain the motion, a proper political department of the United States Government must have recognized the conflict in Mexico either, first, by recognizing the sovereignty of the Constitutionalists, whether that sovereignty so recognized be de jure or de facto, or by recognizing the

belligerency of the Constitutionalists. I am unable to find from any of the documents or records of the several political departments of the United States submitted for my consideration any recognition of these conditions. That motion is denied for that reason.

Mr. Platt: Your Honor will note an objection upon the record to each of the refusals to non-suit?

The Court: Because of the importance of this case, gentlemen, I am going to probably go out of the ordinary and ask you if you have any objections to be entered on the record as to my rulings on any of these points as they may occur to you? To be perfectly plain, I have in mind the request to add Martinez as a party plaintiff.

Mr. Enright: I would like to note an objection.

147 The Court: That objection may be entered.

Mr. Enright: Frankly, I think that is a matter of discretion, but I would like to note an objection.

The Court: It may be.

Defendant's Testimony.

Mr. Platt: I offer in evidence a stipulation, "It is hereby stipulated and agreed that annexed hereto are a correct statement of the area and a correct map of the Republic of Mexico." I do not know whether one of these maps was actually handed to the jury or not. May I hand these copies?

(Paper marked Exhibit D-5.)

Mr. Platt: Now we offer the deposition of Rafail Zuberan. This deposition was taken before George W. Reik, Master in Chancery, on August 12, 1914.

148 (Deposition of RAFAEL ZUBERAN read to jury by Mr. Platt, as follows:)

"Direct examination.

By Mr. Ewell:

Q. What is your full name?
A. Rafael Zuberan.
Q. Are you a citizen of Mexico?
A. Yes, sir.
Q. Where is your home?
A. In the City of Mexico.
Q. When did you last see the City of Mexico?
A. The beginning of the first few days of September of last year; about the second of September.
Q. How long had you been in Mexico City before that time?
A. A long time.
Q. Several years?
A. Yes.
Q. Are you a lawyer?

A. Yes.
Q. Do you belong to the Constitutionalist party of Mexico?
A. Yes, sir.
Q. Is Vanuciana Carranza the head of the Constitutionalists?
A. Yes.
Q. What is General Carranza's title?
A. First chief.
Q. Does General Carranza have a cabinet?"

Mr. Enright: I think at this point, so as to preserve our objections on the record, I shall object to that question as being immaterial and irrelevant, and instead of arguing that objection in extenso at this time we would consent, since there is a lot more of testimony of the same character, to have the objection reserved, or right to move to strike out at the conclusion of the case reserved, so that this case shall not turn on any narrow ruling on any single question.

149 Mr. Platt: I think, if this course is to be taken, and I assume it is in your Honor's own discretion, then I think Mr. Enright should make his objection more specific, so that we will understand the force of his objection, because he might then go through, and say, "Why, I object to every question that has been put on the ground it was—" what was your objection?

Mr. Enright: Immaterial and irrelevant.

The Court: I would ask you to specify what you meant by that particularly.

Mr. Enright: I mean it is immaterial and irrelevant in that its inherent purpose is to show a government headed by Carranza in the Republic of Mexico, whereas, the only competent proof on that fact must be, as far as this court is concerned, the action of the po-

150 litical departments of this government in recognizing or not recognizing such a government. The objection more concretely is that the public attitude of this Government, as evidenced by the attitude of the political department of the government, has failed to recognize any government at the time of this deposition, or at the time at which this witness was testifying in the Republic of Mexico headed by Carranza.

The Court: Well, why may it not then, gentlemen, be left in this position, as suggested by the mover of the objection, that it be left as a general objection to that tenor, or to that effect, and if there is any particular question to which he is objecting for other reasons than that general reason, that he might make and place his objection to that question as it is read and before the answer is made. Understand what I mean?

Mr. Enright: Yes, sir.

The Court: And he has now lodged a specific objection to the line of the testimony, and the purpose he conceives it is going to be used for; that he asked to have the court reserve its findings upon that objection until the conclusion of the case. I can see no great difficulty in that, but the difficulty that I could see that there might and because of their character or because be particular questions because of the form of the character of the answer not being responsive or what

not to them, he might wish to urge a specific objection. These other objections should be made at the time of the reading of the questions, if the objections is directed to the question, or immediately
151 upon the answer being read, if the objection is to the answer, and it will be passed on at that time.

Mr. Platt: That course is satisfactory. The understanding is now that if counsel on the other side has any objection to any of the questions other than that which he has made and which he has specified, that he is to take it at the time the question is asked.

The Court: Yes.

Mr. Enright: I want to amplify the objection. I think I limited the first objection that the matter of recognition of sovereignty was for the government—I mean the recognition of sovereignty or belligerency.

Mr. Platt: Or neutrality.

Mr. Enright: Or neutrality.

"Q. Does Gen. Carranza have a cabinet.

A. He appointed a few secretaries to help him in his administrative work. That would not be a ministry because it was not in conformity with the Constitution. In Mexico the ministers or secretaries are only those in the cabinet of the President, but the ones that he appointed were not such on account of his not being president, but they fill similar positions.

Q. What positions does General Carranza have for secretaries?

A. Secretary of War and Secretary of Communications. A single individual filled the office of Communication and Fomento.
152 Q. What other secretaries are there?

A. Foreign Relations, called here State; and of Government.

Q. Are you the Secretary Gobernacion?

A. Yes.

Q. What are the duties of that office, just generally?

A. Everything having to do with the revolution, and everything that will tend to the triumph of the cause.

Q. When were you appointed?

A. In the month of October of last year.

Q. When was General Carranza made First Chief?

A. When the Plan of Guadalupe was published, the 26th of March.

Q. Is this copy of the "Plan de Guadalupe"?

A. Yes.

Q. Is that an official document of the Constitutionalists?

A. I could not tell you, because I do not see any signs of where it is official, but it does contain official decrees and I see a few errors in it. It does contain official decrees, and, generally speaking, it is all right.

Q. Is this the printing office of the Constitutionalists?

A. It says so there, but I do not know anything about it. It contains official decrees and I think that would be sufficient. It does not make any difference the way it is printed.

Q. This is a correct copy of the "Plan de Guadalupe"?
A. Yes.

Mr. Platt: I will offer that in evidence, if the court please.
Mr. Enright: I object to the offer, not on the ground that it is not a certified or an exemplified copy, not on the ground of
153 its competency, but on the ground that it is immaterial and irrelevant, and not in any lawful way tending to establish the authority of Carranza or of those acting with him to exercise sovereignty or of war. I suppose that is the purpose of it.
The Court: Would not that come in and be considered under your general objection to the entire testimony.
Mr. Enright: I think it would.
The Court: I will so consider it then.

(Paper marked Exhibit D-1.)

Mr. Platt: Now, I offer the translation, the one that is attached to the deposition of Zuberan. You will accept it as a correct translation, will you?
Mr. Enright: Yes.

(Paper marked Exhibit D-1-A.)

Mr. Houston: It is understood that the same objection applies to the exhibits?
The Court: I understand that.

"By Mr. Ewell:

Q. Is the decree of General Carranza, on pages 20 to 23, of this pamphlet, entitled "Decretos," which decree is dated October 17, 1913, a correct copy of the original decree setting forth the duties of the secretaries of the Constitutionalists' cabinet?
A. Yes.

Mr. Platt: Now I offer that in evidence, appearing on page 20 of the same pamphlet.

(Paper marked Exhibit D-2.)

Mr. Platt: I offer in evidence also as Exhibit D-2-A, the translation.

154 (Paper marked Exhibit D-2-A.)
Proceeding with the depositions.

"By Mr. Ewell:

Q. Who is the depository of the original decrees?
A. They are deposited in the respective departments to which they belong, according to the details of which the decree speaks.
Q. In what department is the "Plan of Guadalupe"?
A. In the department of war.
Q. Where would this decree as to the duties of the secretaries be?
A. In the Department of Government.

Q. In what place are the originals?

A. They are on the way with General Carranza.

Q. When you were appointed secretary in October 1913, what territory was controlled by the Constitutionalists?

A. In the Mexican Republic or in the City?

Q. In the Mexican Republic,"—Now gentlemen, if you will refer to the map you have, kindly—"All of the State of Sonora"—that is the green one up at the left—"with the exception of Guaymas,"—that is the port on the left—"with the exception of Guaymas, the port of Matamoras and several"—he said they had the port of Matamoras, which is over just on the other side—the Gulf of Mexico—on the border of Texas—"and several points in the State of Tamaulipas,"—that is the northernmost state on the Gulf of Mexico—"Pedras Negras and other points in the State of Coahuila"—if you will look at the Eagle Pass on the United States border you will find this place—"some places in the State of Chihuahua; all of the State of Durango; all of the State of Zacatecas, with the exception of the capital; and all of the State of Sinaloa"—which is to the left,
155 below Sonora—"with the exception of Mazatlan"—which is down to the south.

Q. What part of the State of Chihuahua was under their control?

A. It depends on the period.

Q. In October, 1913?

A. I could not give a definite answer, because I do not remember very well, but I am sure that the City of Chihuahua, the capital, was not in their possession, and neither was Ojinaga. I do not remember when Juarez was taken." Juarez is directly opposite El Paso, which is across the bridge, on the north. "In October, 1913, did the Constitutionalists have state governments?

A. As they captured the States they established their governments. Before the capture of a Capital the First Military Chief was the superior officer and acted as Governor. He was the main military authority and the only one that there was.

Q. He was the only State official?

A. He was the only supreme authority in the State. When they had not captured the State, but only a certain portion of it, the Military Chief in command of the forces in that region was the superior officer and he exercised the functions of government there. This military commander did everything that he could for the good of the cause and for maintaining his troops and to preserve order in the zone under his control.

Q. As soon as they got control of a State then this military man was made governor of that state?

A. They always made a Military Chief a governor.

Q. By January 1st, 1914, did the State of Chihuahua have a governor?

A. Yes; General Chao.

Q. By January 17st, 1914, did the Constitutionalists control the State of Chihuahua?

A. I do not remember. I am inclined to believe so, but do not remember.

156 Q. Do you know when the city of Juarez was captured? Was it captured in 1913?

A. I think it was in November of last year.

Q. Was the city of Chihuahua, the capital of the state, captured in 1913?

A. Shortly after Juarez was taken. Juarez was captured in November and Chihuahua three or four days afterwards.

Q. Was Francisco Villa in charge of the Constitutionalists' army operating in the State of Chihuahua?

A. Yes.

Q. Did General Villa capture Torreon in the State of Coahuila about October 1, 1913?

A. Yes.

Q. Were other armies of the Constitutionalists in other parts of Mexico commanded by other officers?

A. Yes.

Q. Were all of these generals subject to the orders of General Carranza?

A. All.

Q. Did the Constitutionalists have governments in the cities as well as in the States?

A. Undoubtedly; the whole government was organized.

Q. Did they have courts and judges?

A. No; all was under military authority with the exception of the State of Sonora, because Constitutional order was preserved there.

Q. Did the military have some one act as mayor of a city?

A. The mayors were appointed by the military authorities.

Q. Were judges ap-ointed by the military authorities?

A. They were military judges.

Q. Were these judges army officers?

A. As a rule, no.

Q. Did these judges try civil cases, such as cases of theft?

A. Only government matters were treated of.

Q. Did they have jails in these cities?

A. Yes, sir.

Q. What do you mean "only government matters"?

157 A. Just administrative matters which would not signify a judicial sentence; just preservation of order and administrative matters. Somewhat irregular all of it was, but it was naturally so during the revolution.

Q. Did the Constitutionalists maintain a post office?

A. Yes; to most of these questions that you ask the real answer is that when they could do it they did so.

Q. When the Constitutionalists got control of a territory did they establish these post offices and so on that I have mentioned?

A. I do not know.

Q. Were postage stamps printed?

A. Yes.

Q. Whenever mail was carried were these Constitutionalist postage stamps required in that territory?
A. I understand that they were.
Q. Were the telephone and telegraph operated in the same way?
A. When they were able to.
Q. Were the railroads operated?
A. When they were able to operate them.
Q. Were not they able to do these things in many instances?
A. On some occasions yes and on others no.
Q. From October, 1913, until January, 1914, where were you?
A. In many places.
Q. Name some of them.
A. In Douglas, Arizona; Nogales, Arizona; El Paso, Texas; Hermosillo, Sonora; Maytorena, a revolutionary camp in Sonora; and Ortiz, a revolutionary camp in Sonora.
Q. Were you in Chihuahua?
A. Yes; I was in the State of Chihuahua.
Q. Did the Constitutionalists print money?
A. Paper money.
Q. Was that money in circulation in the places they controlled?
A. I think so.
Q. Was it accepted by the stores and hotels in the cities?
A. I think so.
158 Q. Was it used on the railroads to buy tickets?
A. I think in all classes of mercantile transactions.
Q. Was good order maintained in the cities and places where you went?
A. Yes.
Q. Were the saloons closed at times to keep good order?
A. In no town in which I was was it necessary to do that.
Q. Were the schools running in the cities?
A. Yes; they were.
Q. Were these government schools?
A. Yes.
Q. Would you be willing to state how many men there were in the Constitutionalists' army on January 1st, 1914?
A. I could not tell that.
Q. Were there over 25,000?
A. I can say absolutely nothing regarding that matter.
Q. Did the United States have consuls in the various towns?"

Mr. Enright: Specifically we urge another objection to that, that it is not the best proof of the accrediting of a consul to a particular place.

159 Mr. Platt: If your Honor please, I do not want to be in the position of in any way attempting—I am not prepared to prove that these consuls that are referred to here were regularly accredited to the Constitutionalist government. I will say that now.

The Court: On your statement I will rule on the motion to strike out, or the objection to the question, and I will sustain the objection.

Mr. Platt: May I record an objection to your ruling, so far as

it applies to the first sentence of the answer. As to the last sentence wherein he states that he has been informed, that of course I do not object to.

The Court: Yes. All right. Your objection is to my ruling as it applies to the first sentence of the answer.

(The answer of the witness which was objected to was as follows: "The Witness: In the cities in which I went I found consuls in Chihuahua, and Juarez; Hermosillo, in Sonora; and Culican in Sinaloa. I have been informed that in all the other cities there was consuls."

"Q. Did the United States Government have special representatives confer with General Carranza?

A. I do not know any one who had gone there with any credentials.

Q. In the months of October, November and December, 1913, were ammunitions of war imported freely by the Constitu-
160 tionalists from the United States?

A. The embargo was still on in those months and they were not able to import any arms or ammunition.

Q. In this book marked "Decretos," is this decree on pages 7 and 8, dated May 10, 1913, a correct copy of a Constitutionalists decree?

A. It is."

Mr. Platt: The decree on pages 7 and 8, dated May 10, 1913, is offered in evidence.

(Paper marked Exhibit D-3.)

Mr. Platt: I offer also the translation which appears attached to the Zuberan deposition.

(Paper marked Exhibit D-3-A.)

"By Mr. Ewell:

Q. Where is the original of that decree?

A. I don't know. I was not with General Carranza when that decree was issued, but the decree itself says where the original is. It ought to be in the Treasury Department.

Q. Is it possible to get certified copies of these decrees; and, if so, where?

A. Wherever General Carranza can be found they may be gotten. If you will wait for two or three days you might get them from the City of Mexico.

Q. Is it possible to get a copy of that pamphlet in Washington?

A. I think not.

161 Q. Generally speaking, how much of Mexico to-day is controlled by the Constitutionalists?

A. Seven-eighths of the whole republic.

Q. On January 1st, 1914, about what proportion of the country was controlled by the Constitutionalists?

A. I could not tell positively. They had acquired a great deal more than they had before.

Q. About how much did they have?

A. The Constitutionalists were scattered more or less throughout the whole Republic, and, as a rule, the capitals of the States were in the hands of the Federals. Vera Cruz, San Luis Potozi, Zacatecas, Aguascalientas, Pueblo, Morelos, Guerrero, Michoacan, Hidalgo and the frontier States were the ones we had on the first of January. We controlled most of the territory in those states, but the Federals had nearly all the capitals.

Q. On January 1st, 1914, did the Constitutionalists control in nearly all of the State of Chihuahua?

A. Yes.

Q. What is the largest state in Mexico in area?

A. Chihuahua.

Q. What is the next largest?

A. Sonora and then Jalisco.

Q. How much of the State of Sonora was controlled by the Constitutionalists on January 1st, 1914?

A. The whole State with the exception of the port of Guaymas.

Q. How much of the State of Sinaloa?

A. The whole State of Sinaloa with the exception of the port of Mazatlan.

Q. How much of the State of Durango?

A. All of it.

162 Q. During this time the Constitutionalists were engaged in war against the followers of Victoriano Huerta, were they?

A. I think so.

Q. Was the territory in Mexico controlled by the Constitutionalists on the increase or decrease from March, 1913, to January 1st, 1914?

A. On the increase.

Q. From January 1st, 1914, until to-day, has it still increased?

A. It has always increased from the beginning of the revolution.

Q. In the principal cities were the street cars run and the electric lights operated?

A. I think so.

Q. I refer to the cities controlled by the Constitutionalists.

A. I suppose so. I was not in all of them.

Q. In those that you were in?

A. In Chihuahua there are no electric street railways.

Q. Before General Carranza became First Chief, what position did he hold?

A. Constitutional Governor of Coahuila.

Q. He was elected about the same time that President Madero was elected?

A. Yes."

"Cross-examination.

By Mr. Enright:

Q. Was Carranza Constitutional Governor of Coahuila at the time that he became First Chief of the revolution?

A. Yes.

Q. What were his constitutional duties and powers as Governor of Coahuila?

A. Similar to what the Governor of a state here in the United States has.

Q. At that time Mexico was a Republic, was it not?

A. I think so.

Q. It was made up of a number of different states?

163 A. Yes; that is what the geography says.

Q. I am asking for what you say?

A. That is what I say.

Q. And the Governor of each of these states had no authority outside of his own state, did he?

A. It was exactly the same organization as that of the United States.

Q. Without going into the government of the United States, can you not answer the question as to whether or not the Governor of a state, a governor, had any authority or power outside of his own particular state?

A. No.

Q. The constitutional powers of Carranza as Governor of Coahuila are derived from a written constitution, are they not?

A. Yes.

Q. Will you tell us what they call the written constitution which was in force in the Republic of Mexico at the time of the adoption of the "Plan de Guadalupe"?

A. The constitution at present in force was adopted in 1857.

Q. Under this constitution Carranza as Governor of Coahuila was entirely a civil officer, was he not?

A. He was a civil governor.

Q. He had no control over the military forces of the Republic as Governor, did he?

A. Yes, of the state troops. On account of the abnormal condition of the country he was in charge of the recruiting of the military in that state as well.

Q. Was that before the adoption of the "Plan de Guadalupe"?

A. I am speaking now of him as a governor without taking into consideration of the "Plan de Guadalupe."

Q. Does the Constitution vest in the civil Governor any military powers?

A. In exceptional cases, yes; such as the defense of the nation or in a foreign war and various other cases.

Q. Such military powers as the governor *possessors* in those extraordinary cases are exercised subject to the supreme control

164 of the Federal Government, are they not?

A. Yes.

Q. Are the powers which Carranza exercised as First Chief of the Constitutionalists under the "Plan de Guadalupe" authorized or provided for by the Constitution of the Republic of Mexico as vested in a civil governor of a state?

A. Independent of the character of Governor Carranza, the pow-

ers which Carranza has exercised as First Chief are derived from the constitution of the Mexican Republic, which authorizes the Mexicans, in cases similar to those which have happened now, to take up arms for the defense of the laws and their institutions.

Q. Is there anything in the Constitution of the Republic of Mexico which authorizes the Governor of the State of Coahuila to exercise the powers which have been exercised by Carranza as First Chief of the revolution or constitutionalists?

A. No; no constitution has special cases like that. The constitution of Mexico, as in all other countries, gives it general rules and within these general rules different situations arise.

Q. You do not attribute the powers which Carranza has exercised as First Chief of the Constitutionalists as pertaining to his office of Constitutional Governor of Coahuila, do you?

A. Neither I nor any other Mexican. His character as First Chief was because he was the first one that came out in defense of the law to defend it from violation and in not recognizing Huerta.

Q. What is the constitutional capital of Coahuila?

A. Saltillo.

Q. Carranza's office as First Chief of the Constitutionalists was created by or arose from the "Plan de Guadalupe," is not that true?

A. It came originally from the "Plan de Guadalupe" and has been ratified by the Mexicans who have been in the ranks
165 and even the civilians who have joined the Constitutionalists.

Q. But in the beginning the origin of authority as First Chief was the "Plan de Guadalupe"?

A. Yes.

Q. That plan was adopted at the estate de Guadalupe?

A. Yes.

Q. How far is that from Saltillo?

A. I do not know.

Q. About how far?

A. I could not tell you.

Q. Is it in the State of Coahuila?

A. It is in the State of Coahuila.

Q. At the time of the adoption of Plan de Guadalupe was the City of Saltillo in possession of the Huerta forces?

A. Yes.

Q. So Governor Carranza had abandoned his capital at the time that he assumed authority as First Chief of the Constitutionalists under the Plan de Guadalupe?

A. The necessities of the struggle made him abandon it.

Q. Before the outbreak of the revolution did the State of Coahuila have an army of its own except as a part of the general Federal Army of the Republic?

A. It cannot be said that it was really separate from the Federal troops, but Carranza was authorized to organize what was called irregular tro-ps, because at that time Orozco was in arms against the Government. That does not mean to say that these men were not under orders of the general Government.

Q. Were they in fact under the orders of the General Government?

A. Mr. Carranza organized these troops because the State was very populous and very rich, and the people came to join these troops and they were all under the dominion of the central government in Mexico City. Upon the coup d'etat of Felix Dias and Huerta these troops of Carranza went to Mexico City to protect Madero.

166 Q. After the death of Madero where did these troops go?

A. Every one of them went with the Revolution.

Q. Subsequent to the Plan de Guadalupe is it not true that the authority of all of the officers of the Revolution was derived under edicts or commissions from Carranza as First Chief?

A. Yes.

Q. As the Constitutionalists took possession of a city or a place the military officer in command designated local officials, I think you said?

A. Exactly.

Q. The military officer had the right, did he not, to define or prescribe the powers of the local officials and to withdraw those powers if he saw fit?

A. Undoubtedly, if that region was under his control, he had to prefer always the military necessities.

Q. Such local government as was set up in these occupied places was solely a military government, was it not?

A. No.

Q. To the extent that officers were appointed with civil duties, those duties were within the absolute and arbitrary control of the military officer, were they not?

A. Yes, they were.

Q. The military officer was absolute?

A. Yes; the situation exacted that.

Q. The railroad was run principally for military purposes, was it not?

A. Yes; exactly.

Q. Soldiers generally accompanied each of the trains, did they not?

A. Not necessarily. If they had to they would go on the trains, but on regular passenger trains as the whole country had been dominated by the Constitutionalists there was no necessity for military guards.

Q. When the Constitutionalists wanted to purchase supplies for their army did they not compel the sellers to accept Consti-

167 tutionalist paper money?

A. There was no necessity for compelling them because all of them received it voluntarily.

Q. Was it safe for a civilian to refuse to accept Constitutionalist money when it was tendered?

A. It was safe as far as life was concerned, but he would be punished. It was obligatory to accept it.

Q. How would he be punished for not accepting it?

A. By a fine.

Q. Would he be imprisoned?
A. No; only fined.
Q. How big a fine?
A. Proportionate to the amount of money that he refused to accept until it got to a maximum which they could not very well pass.
Q. What was that maximum?
A. I do not remember.
Q. Was that prescribed by any edict of Carranza's?
A. Yes.
Q. If the fine was not paid or could not be paid, was the guilty person imprisoned?
A. Probably."

Mr. Houston: Do we need to read these passages?
Mr. Platt: I shall read them if you do not, because it is your cross examination.
Mr. Houston: We ought not read them, to be consistent. We will omit that passage. Do you want to read it?
Mr. Platt: Shall I read it right now? These questions were asked on cross examination, and as counsel for the plaintiff declines to read them I will read them:

Mr. Platt:

"Q. You have said that there were American consuls during this period of the revolution in most of the cities?
A. Yes.
Q. Were they not the same consuls who were in these
168 places before the outbreak of the revolution?
A. I understand that they were.
Q. Do you know of any consul appointed by the United States and accredited to a city under the control of the revolutionists during the time of the revolution?
A. No."

Mr. Enright: I ask to strike that out as being immaterial and irrelevant, it appearing that the accrediting was all done through a preceding government, and on the further ground that it is incompetent.
The Court: It seems to me you ought to have raised it before the thing went in. You had knowledge of it.
Mr. Smith: It was his examination.
The Court: It was a cross examination upon a part that I have stricken out.
Mr. Enright: For that reason I did not read it as part of our cross. The other side offers it as affirmative proof on their part. It seems to me that this question would have to be raised by motion to strike out, inasmuch as it was not until the last answer that the immateriality was fully apparent, namely that the accrediting was all through a preceding government.
The Court: If it is immaterial it cannot affect you, can it?
Mr. Enright: I think it is incompetent.

The Court: I decline to strike it out.

Mr. Enright: Objection.

Mr. Platt: Now I ask to be allowed to read the question and answer on the direct examination that your Honor excluded.

The Court: On what ground do you make that motion?

Mr. Platt: On the ground that it shows the places in
169 which he found the consuls. It seems to me that is very material, that our consuls were there and were not withdrawn under all these circumstances. Look at it in that light.

Mr. Enright: If there were a case of complete anarchy it would be a situation which requires the government of this country to retain its consuls previously accredited there to look out after the interest of Americans and American property.

The Court: However, what the argumentative force may be to all of that, I am inclined to accede to the request of the defendant's attorneys, because with the cross examination which has been read on that subject it seems to fully explain the answer to the question which was eliminated before. I do not see that any harm can come in because of it, and for that reason I will permit it.

Mr. Enright: Note an objection.

The Court: You may have your objection noted.

Mr. Houston: Will you note our objection both to the last ruling and to the ruling admitting the last passage that Mr. Platt should have read and the overruling of our objection to it?

Mr. Platt: I want to read the last sentence of the question that was ruled out before and is now admitted by his Honor, which states:

"Q. Did the United States have consuls in the various cities?

The Witness: In the cities in which I went I found consuls in Chihuahua and Juarez; Hermosillo in Sonora; and Culican in Sinaloa."

170 Mr. Platt: Make it plain I did not read the last sentence of that answer.

Mr. Houston continued to read as follows:

"Q. Up to January 3, 1914, there was not any postal service maintained with any regularity in Coahuila, was there?

A. I think not.

Q. Were you in the city of Torreon between the first of October, 1913, and the 3rd or 4th of January, 1914?

A. I have not been in the city of Torreon.

Q. Or in the city of San Pedro?

A. No.

Q. So of your own knowledge you do not know anything about the conditions during that interval of time in those two cities?

A. I know what was going on in those cities at the time, but not the battles because I did not take part in the battles.

Q. You do not know from your own observation made on the ground anything about local civil conditions in those cities?

A. No; not in those two cities."

Mr. Enright: Now I move to strike out the evidence as given by

the witness on the direct examination as to local conditions, on the ground it shows he has no personal knowledge of the things which he testified to in the locus in quo, in the cities, in Torreon and San Pedro.

Mr. Platt: What part do you move to strike out, Mr. Enright?

Mr. Enright: Well, the part where he testified to street cars and good order and the closing of saloons, and all that line of testimony; he testified to them as facts as he went along, as though it was within his personal knowledge.

171 Mr. Platt: In the first place, if the Court please, these are matters of government of the country, of which Mr. Zuberan would have general knowledge. In the next place, I think it was too late to strike it out. It has got before the jury without objection, except as to the general objection, and of course it is the best proof you can get of those things—it is the kind of proof of government that is always admitted.

The Court: What is the answer that particularly brings up this motion to strike out?

Mr. Houston: Well, I asked him: "Were you in the city of Torreon between the 1st of October, 1913, and the 3rd or 4th of January, 1914." Those dates cover the whole transaction complained of.

"A. I have not been in the city of Torreon.

Q. Or in the city of San Pedro?

A. No."

That is on page 20. Then at the bottom of page 20: "You don't know from your own observation made on the ground anything about local civil conditions in those cities?

A. No, not in those two cities."

Mr. Enright: Then, so that the whole matter may come up——

Mr. Houston: He said later he was not in the city of Coahuila.

Mr. Enright: Was not anywhere in the entire state of Coahuila. His testimony which is asked to be stricken out dealt with matters of observation. He testified positively that he knew these things, and he testified thus and so. On cross examination it now appears that whatever might have been his observation as to conditions in those places where he was, it was hearsay as to those places in the State of Coahuila, where he was not present.

172 Mr. Platt: He simply says he was not in those two cities. He admits on cross examination as to other places, and besides that I think Mr. Zuberan's testimony is entirely competent in so far as he gives it. It was not objected to as to the conditions in the country of which he was a member of the cabinet. Under these conditions the best evidence you could possibly get—the kind of evidence, I think, which is ordinarily used to prove it—a member of the cabinet.

Mr. Enright: As such it is not his business to know whether saloons are closed in Coahuila.

The Court: I will overrule the objection.

Mr. Enright: On the motion to strike out.

The Court: That is the motion to strike out.

Mr. Enright: Objection.

Mr. Houston: Note an objection to that.
Mr. Houston continues as follows:

"Q. Before the revolution were the telegraphs and telephones in the Republic of Mexico operated by the government?
A. Yes, and during the revolution by the Constitutionalist government.
Q. During the revolution, when the Constitutionalists occupied a new territory, they took possession of the telegraphs and telephones that they found there, did they not?
A. Exactly.
Q. They put their own military officers over the officials who were in direct charge of operating these two services?
A. They would throw out those who were working there and put our men in.
Q. By "our men" do you mean the soldiers?
173 A. No; Constitutionalists' telegraphers or railroad men.
Q. In the course of the war were not some of the telegraphs and telephones destroyed?
A. Many of them were destroyed, but the Constitutionalist government repaired them immediately. They now have communication throughout the general Republic.
Q. At the present time?
A. At the present time.
Q. On January, 1914, however, communication was quite irregular, was it not?
A. In all the territory dominated by the Constitutionalists it was regular.
Q. A good deal of railroad property was destroyed, was it not, in the course of the fighting?
A. I understand that much was destroyed, but all have been repaired by the Constitutionalists' forces; that is the roadway.
Q. Is it not true that in the interval between the first of October and the 3rd of January, 1914, the ordinary conditions of civil life in Coahuila were very much demoralized and disturbed and irregular?
A. It was in a state of revolution.
Q. Does not that mean an abnormal state, a state of disturbance?
A. The whole Republic.
Q. I am asking you now about the State of Coahuila.
A. The State of Coahuila is comprehended in that.
Q. During that interval there were some Federal troops in the State of Coahuila, were there not?
A. That is where there were more Federal troops, but there were always plenty of revolutionists, too. There were always Constitutionalists forces in that State.
Q. Do you know of your own knowledge anything about the operation of the schools in the city of Torreon between the 1st of October and the 3rd of January, 1914?
A. No.

174 Q. Of your own knowledge, do you know anything about what judges or courts or civil officers there were in the city of Torreon between the 1st of October and the 3rd of January, 1914?

A. I have not been in the city of Torreon since the year 1909, and I do not know of anything that has gone on there of my own observation.

Q. And that applies also to the city of San Pedro?

A. Yes.

Q. How about Santa Rosalia?

A. The same; that is from my own observation.

Q. What part of Coahuila were you in yourself in that interval between the first of October and the 3rd of January?

A. I was in the State of Sonora during that time and not in the State of Coahuila."

Mr. Houston: I think we will renew our motion to strike out the testimony of the witness as far as it purports to state as facts the existence of government de facto in the State of Coahuila, between October 1st, 1913, and January 3rd, 1914, on the ground it now appears he was not within the state, and he was not testifying from his own knowledge.

The Court: I will decline to strike out. You may have your objection.

Mr. Houston: We take our objection.

"Q. You have spoken of the secretaries appointed by Carranza to assist him in administering his affairs.

A. Yes.

Q. Did you say there was a secretary who had charge of the finances of the Revolution?

A. Yes.

Q. Who was he?

A. It depends on the epoch.

Q. Say between the first of October and the middle of January, 1914.

A. There were two gentlemen in that time. First there was
175 Mr. Escudero and afterwards Mr. Villareal, who at present holds that position.

Q. Each of these gentlemen exercised his power under a written commission from the First Chief, Carranza?

A. Written or verbal, the commissions?

Q. Do you know which?

A. Written, the appointments.

Q. So that it would be possible to know exactly what the powers of each of these secretaries were?

A. You have that information in that pamphlet there.

Q. These secretaries of the finances, or the treasurer, or whatever you call it, it was their duty to raise the money to finance the revolution, and they always had charge of the spending of the money except perhaps for the maintaining of the army in the field?

A. In the Pamphlet there is a decree that determines the rights and duties of these gentlemen."

Mr. Platt read the re-direct examination as follows:

"By Mr. Ewell:

Q. Is Huerta still in Mexico?
A. I do not know.
Q. Is General Carranza in Mexico?
A. I suppose so.
Q. Were the States of Chihuahua, Sonora, Sinaloa and Durango controlled by the Constitutionalists sooner than the State of Coahuila, that is as states?
A. Yes."

176 Mr. Platt: "It is hereby stipulated and agreed between counsel for the plaintiffs and counsel for the defendant, Central Leather Company, that General Francisco Villa, if produced at the trial of the above cases, would testify as follows:"

This is dated. I will read the rest of the stipulation without reading what he says. This is dated on September 20, 1914.

"It is further stipulated that said testimony may be used in trials of the above cases subject to the same objections as if the said General Francisco Villa were produced at the trials thereof, and the plaintiff shall have the right to object to the competency or relevancy of any part thereof on every ground, both as to form and substance, including the objection that some parts thereof are not statements of fact but the conclusions of the witness."

Mr. Enright: The situation has changed since the date of that stipulation, and in view of that the stipulation should be limited to that as Villa's statement as of the date of the stipulation. For instance, the first sentence there is——

Mr. Platt: Mr. Enright is quite right about it.

Mr. Enright: —"since July, 1913, I have been Commander-in-Chief of the Constitutionalist Army of the North."

"Since March, 1913, I have had under my command a part of the Constitutionalist Army, subject to the orders of General Venustiano Carranza."

I do not admit that he would testify to that as of this date. The newspapers are full of the fact that Villa was in rebellion against Carranza.

177 Mr. Platt: Now, now, now! The newspapers are full of the contrary.

The Court: Your only objection is that it cannot be used if brought up to the present day?

Mr. Enright: We would not stipulate as of the present date.

Mr. Platt: Mr. Enright is quite right. I concede that is so.

Mr. Enright: We will let that go in if you cut out that clause.

Mr. Platt: I will let it go in as it is but I will make it perfectly plain that this testimony is given of the 20th of September, 1914.

Mr. Enright: And since that date——

Mr. Platt: No, I object to "since that date," because I don't know anything about it.

Mr. Enright: There is the New York Times of this morning.

Mr. Platt: Where is the New York Times you have got? It is the very think your Honor said you would not do, depend on newspapers.

The Court: Well, I don't know. What objection have I before me, gentlemen?

Mr. Platt: I do not think that you have any.

Mr. Enright: I ask, by reason of what I allege to be our information as to the change in the condition between Villa and Carranza since the date of the stipulation, to have that stipulation limited as of this date, and to be relieved of that part of it which is to the effect that Villa, if called at the trial on this date, would testify as stated there.

178 The Court: So that what he says in the stipulation as narrating what he would say if upon the witness stand is to be as if that testimony had been taken on the day of the stipulation only?

Mr. Enright: Yes, not this present date.

Mr. Platt: That is quite right.

Mr. Platt: Now, gentlemen, you understand what we have said, I presume, that is to say, this was a stipulation made on the 20th of September of this year in these circumstances, as though General Villa had given this testimony on that day and as of that date, and this is it:

"Since March, 1913, I have had under my command a part of the Constitutionalist Army, subject to the orders of General Venustiano Carranza.

Since July, 1913, I have been Commander-in-Chief of the Constitutionalist Army of the North.

During the same year I had encounters with Huertists forces at Casa Grandes, San Andrés and other places in the State of Chihuahua. The cities of Parral, Santa Rosalia and Jiminez and the southern part of the State of Chihuahua were controlled and remained in the possession of the Constitutionalist Army, and also the States of Sonora, except Guaymas, Sinaloa, except Mazatlan, all of Durango and important parts of the States of Tamaulipas, Coahuila, Nuevo Leon and other states of the Mexican Republic within which various other Constitutionalist Generals were operating.

On October first, 1913, I captured the city of Torreon, driving therefrom General Munguia and the Huertista forces. I also
179 occupied San Pedro and all of the territory which lies between these two cities. My forces consisted of approximately six thousand men, and various Generals, including General- Contreras, Herrera, Benavides and Urbina, were in command under me.

In the districts occupied by the Constitutionalists, the railroads were operated by the Constitutionalist forces, and the cars in which the hides in these suits were contained could only have been moved by the orders of the Constitutionalist officers.

Subsequently I captured successively the cities of Juarez, Chihuahua and Ojinaga, in the State of Chihuahua, driving all the Huertista

forces out of this state. This state has been in the complete possession of our forces since January, 1914."

Mr. Enright: I understand the general objection which we made to this line of testimony applies not only to the testimony of this witness, but to this stipulation and the other witnesses.

The Court: I have understood so.

Mr. Platt: That is understood.

Paper marked Exhibit D-6.

Mr. Enright: Under that stipulation there is an objection to the competency of the statement, and I call attention particularly to the concluding part, "the cars containing the hides could have been moved only by order of the troops." It seems to me that is an incompetent conclusion.

The Court: Are you agreed on that point now, the motion to strike out?

Mr. Enright: Yes.

The Court: I will not strike it out. I will permit it.

180 Mr. Enright: Note an objection.

Mr. Platt: I will read the deposition of Lazaro De la Garza. I am reading a translation. This is the original translation that I am reading. I think it had better be identified, because there have been some corrections. The point is this. There were a good many objections taken, and Mr. Ewell, my associate, and Mr. Houston have gone through it and have crossed out certain things and have initialed them. Therefore I think that paper ought to be identified as the one that I read, so there could not be any mistake.

The Court: Let it be marked for identification.

Mr. Platt: Mark it for identification of the deposition of De la Garza.

Paper marked "Deposition for identification of De la Garza, K.

Mr. Platt: I will state on the record by consent of Mr. Enright, that this document so marked for identification contains the changes in ink and pencil which have been initialed by Mr. Ewell, and Mr. Houston, counsel on the other side.

Mr. Enright: Under a stipulation. All right.

Mr. Platt read the deposition as follows:

181 "LAZARO DE LA GARZA, a witness of lawful age, being called by the defendants and sworn, was examined and testified as follows:

Direct examination.

By Mr. Ewell:

Q. What is your name?
A. Lazaro De la Garza.
Q. Are you a citizen of Mexico?

A. Yes.
Q. Where is your home?
A. Torreon.
Q. Were you in Torreon *in* October 1, 1913?
A. Yes.
Q. How long had you been there?
A. Three years; I have always lived there, but was there for three years prior to that time.
Q. From February, 1913, to October, 1913, in whose possession was Torreon?

Mr. Enright: I object to it as calling for a conclusion. That is in addition to the standing objection.
Mr. Platt: That was the question that was asked of the plaintiff's witness and he testified in regard to it.
The Court: This witness is testifying as a citizen and resident of that state, isn't he?
Mr. Platt: Yes, and I believe he was an officer of the Constitutionalist government.
The Court: I will overrule the objection.
Mr. Houston: Note our objection.

Mr. Platt continued to read as follows:

"A. The Huerta authorities.
Q. Was the City of Torreon in the Laguna District?
A. Yes.
Q. In the State of Coahuila?
A. Yes.
Q. Is the City of San Pedro also in the Laguna District?
A. Yes.
Q. Prior to February, 1913, under whose authority had been the City of Torreon?"

182 Mr. Enright: Same objection, and I presume the same ruling.
The Court: Same ruling.
Mr. Houston: Note an objection.

"A. The Madero authorities.

By Mr. Ewell:

Q. Did the Huertistas have a military force at Torreon?
A. Yes.
Q. Under the command of General Mungia?
A. Mungia first and later General Valasco.
Q. Was Torreon attacked by the Constitutionalists in September, 1913?
A. Yes.
Q. Did the fighting last for several days?
A. Yes.
Q. Did the Constitutionalists capture the City of Torreon?

A. Yes, the 1st of October.
Q. Who was in command of the Constitutionalists?
A. General Villa.
Q. By what name was this division of the Constitutionalist Army known?
A. The Division of the north of the Constitutionalists.
Q. How large was the Army of the North at this time?"

Mr. Enright: I object on the ground that the witness is not qualified as having knowledge.
The Court: I will overrule the objection, to which you may note your objection.
Mr. Enright: Objection.

"A. Five thousand men were the number that entered Torreon, but the Division of the North was much larger than that, that is, at that time.
Q. At the present time you belong to the Constitutionalist government of Mexico?
A. Yes, I am a Constitutionalist—Constitutionalist ideas.
Q. And how long have you been connected with the Con-
183 stitutionalist Government?
A. Immediately after the Constitutionalists took possession I was appointed as an Attache, especially in the branch of finance.
Q. Prior to that time had you been a business man in Torreon?
A. Never.
Q. Were you actually in Torreon when it was captured by the Constitutionalists?
A. Yes, sir.
Q. What official position did you first hold with the Constitutionalist Government?
A. In the Department of Finance.
Q. In Torreon?
A. In Torreon.
Q. And have you been connected with the Department of Finance ever since?
A. Up to this date.
Q. After the Constitutionalists captured Torreon, were civil officials appointed for the city?"

Mr. Enright: Objected to as immaterial, irrelevant and leading. I do not particularly press the leading objection.
The Court: I will overrule the objection. You may have your objection.
Mr. Enright: Exception.

"A. They appointed the same ones that were there before February?
Q. That is you mean the ones that had been constitutionally appointed under the Madero government?

Mr. Enright: Objected to as leading.

A. Yes.

Q. Who was appointed Mayor of the City of Torreon after the Constitutionalists entered in October?"

184 Mr. Enright: Objected to as incompetent, immaterial and not the best evidence.

The Court: Overrule the objection.

Mr. Enright: Objection.

"A. The authorities there are a president and eight or ten men, officers and aldermen, etc., or advisors; a president and eight or ten advisors or aldermen.

Q. After the Constitutionalists entered did they have judges in the City of Torreon?

A. The civil authorities were the ones that were acting at that time; all that remained there were the civil authorities, the same old officials.

Q. These were reinstated--were these reinstated by the Constitutionalists when they entered the City of Torreon?"

Mr. Enright: I object to it as leading and cross examining his own witness.

The Court: I will overrule the objection.

Mr. Enright: Objection.

"A. Yes; they were reinstated; they were held on in their respective places, and they were not touched at all; none were removed; they were kept on in their respective places.

Q. But in the interval between February and October, 1913, were these positions held by Huertistas?"

Mr. Enright: Objected to as being cross examination of his own witness.

The Court: Overruled.

Mr. Enright: Objection.

"A. At first they were the Maderoistas, but little by little they eliminated them, and some were thrown out and others had to get out.

185 By Mr. Enright:

Q. Those are the Maderoistas, or whatever you call them?

A. Maderoistas; yes.

By Mr. Ewell:

Q. Were you acquainted with Manuel M. Martinez?

A. Yes, sir.

Q. Did he hold a position under the Huertistas?

A. He was a sympathizer, and he had direct active connections with them."

Mr. Enright: I move to strike out the answer, as a matter of which the witness could not have personal knowledge, and that it purports to give the mental state of another person.

Mr. Platt: I consent that it be stricken out.

"Q. Do you remember what position Martinez held?
A. I understand that he was an alderman; he took part in the election, and I understand that he was an alderman."

Mr. Enright: I move to strike out the answer as incompetent and hearsay. He says, "I understand that he was."
The Court: It may be stricken out on that point. I will strike it out on the ground it is hearsay.

"Q. After the Constitutionalists entered Torreon was a police force installed in the city immediately?
A. Yes, sir.
Q. Were the public schools run?
A. Yes, sir.
Q. Were the street cars, telephones and telegraphs run?
A. Everything started to work.
Q. Were the saloons closed?
A. They were closed; they were prohibited—the opening of cafes in all parts—in all parts where General Villa is the closing of saloons is ordered.
186 Q. How long did the Constitutionalists hold Torreon?"

Mr. Enright: I object to it as calling for a conclusion.
The Court: A matter of general notoriety in the locality. I will overrule the objection.

"A. The first time about two months and eight or ten days.
Q. That is, until about the 8th or 10th of December?
A. Yes, until the 10th, or from the 5th to the 12th of December.
Q. Were you in Torreon during this entire period?
A. Yes, sir.
Q. During this time did you see any looting done by the Constitutionalist soldiers?
A. No. The minute General Villa took possession a commission was appointed to avoid or prevent the military contributions, of which I was appointed one."

Mr. Enright: I move to strike out, as not responsive—that is, the part of the question which is not responsive. The question is, "Did you see any looting done? A. "No," that is responsive. The minute General Villa took possession a commission was appointed to avoid or to prevent the military contributions, of which I was appointed one," that is not responsive.
187 The Court: I will not sustain the motion to strike out. I decline to strike it out.

"Q. While you were in Torreon was a tax levied there by the Constitutionalists?
A. At first, Villa his idea was to impose a military contribution; the citizens got together then and said that they would prefer to spontaneously get this money together—and give it to him, and in

exchange to give them complete guarantees, and to avoid loot and all kinds of depradations."

Mr. Enright: This objection is in our general objection.
Mr. Platt: I see.

"Q. Do you know whether a tax was levied by the Constitutionalists at Torreon?
A. Yes.

Q. Do you know whether a tax was levied by the Con-
188 stitutionalists at Torreon?

A. They put a contribution of three million Pesos in all the region of Laguna, on all the district of Laguna."

Mr. Houston: It is our general objection.

"Q. Was a tax levied by the Constitutionalists at Torreon?

Mr. Enright: Objected to as irrelevant and immaterial.

A. They went with the intention of putting this contribution; they acted according to four commissions which were appointed—four distinct commissions. They left it to these four commissions to impose this tax; these four commissions were divided into four branches, agriculture, industry, mining and banking.

Mr. Enright: I move to strike out the answer because the intentions of the Constitutionalists are immaterial, and the witness' testimony with respect to the entire answer is irrelevant and immaterial.

By Mr. Ewell:

Q. After the Constitutionalists entered Torreon, did they levy the tax there; I want an answer, yes or no.

Mr. Enright: Objected to on the ground that the witness is not qualified to give an answer, and that it calls for a conclusion, and is irrelevant and immaterial.

A. They tried to impose a contribution in order to get supplies, to provide themselves with the implements of war, but after they put it up to the citizens they took the matter up direct with the citizens.

189 Mr. Enright: I move to strike out the answer on the same grounds.

By Mr. Ewell:

Q. How was the proportion of the tax determined?
A. All the citizens that paid the taxes that had business were got together and they agreed to divide the three millions in four branches, industry, agriculture, banking and commerce. In commerce mining also was included."

Mr. Houston: That motion there we declined to take it out. We will have it ruled on.

The motion is, "I move to strike out the answer as hearsay, as incompetent, and as not within the knowledge of this witness."

Mr. Platt: He says he was a member of the commission.

The Court: What was the answer?

Mr. Platt: The answer was, "All the citizens that paid the taxes that had business were got together and they agreed to divide the three millions in four branches, industry, agriculture, banking and commerce. In commerce mining also was included."

Mr. Enright: See how absurd a thing that is, for a witness to testify as of his own knowledge—all of the citizens—thirty-five thousand of them.

The Court: Why might not that be within his knowledge?

Mr. Platt: He says all of the citizens that had to pay taxes or had business were got together.

The Court: I will not strike it out this time.

Mr. Enright: Objection.

190 "Q. Were you on this finance committee?
A. Yes.

By Mr. Ewell:

Q. What position on the committee did you hold?

A. I was later appointed Chief of the Commission of Finance, but at first I just went there with Engineer Villareal to try in the name of the citizens—the name of the people, to reduce the contribution; Villareal is a civil engineer.

Mr. Enright: He says he went there—where?

The Witness: We went to General Villa to see what his people wanted—to get information what they wanted; then later this Commission was formed, of which I was appointed Chief.

By Mr. Ewell:

Q. When were you appointed Chairman of the Commission?

A. After the people and General Villa came to an agreement, I was appointed as Chief of the Commission. Engineer Villareal and myself had the same title.

Q. Did you say there was one finance committee to levy this tax?

A. The people named these four commissions.

By Mr. Enright:

Q. What people?

A. The people appointed these four commissions to divide the tax; at first in a big room the taxpayers got together and they discussed what each branch should be taxed. The three million Pesos should be divided between these four commissions.

By Mr. Ewell:

Q. Was that three million dollars or pesos?

A. Pesos; Mexican pesos.

191 Q. Were you present at this meeting?

A. There were more than one hundred people in that hall at the time. The three million was divided into four parts, in proportion according to the business after these four commissions were appointed they then selected a director for each commission; it was that commission that imposed this contribution in proportion.

Q. Were you present at that meeting yourself?

A. Yes.

Q. Did you take part in the discussion?

A. The only thing I did was to walk back and fro, bringing the news to General Villa; bringing back the reports to General Villa.

Q. Where was General Villa?

A. He was in the Hotel Salvador, three blocks from the Casino, where these discussions were held.

Q. How was the three million pesos—how was that amount selected or determined?

A. I just told you; I just said it before; it was divided into four commissions.

Q. Did the people on these four committees themselves determine three millions as the amount to be raised?

A. No, General in Chief Villa determined the three million pesos, and the duties of these commissions was to divide this contribution in four branches according to the capital.

Q. Then you became Chairman of the Committee to collect this amount?

A. No; the heads of these four commissions had to collect and deliver to the bank in the name of the Constitutionalist Troops of the Division of the North.

Q. What did you have to do with the collection of this tax?

A. To sign the orders to withdraw the money from the bank, with two or more signatures of Generals.

Q. Whose other signatures?

A. General Contreras and General Robles, in order to distribute it amongst the troops.

192 Q. Did you have a title?

A. I had the appointment of General Villa authorizing me, together with two generals, to withdraw the money from the bank.

By Mr. Enright:

Q. Was this appointment in writing?

A. Yes, naturally, yes.

By Mr. Ewell:

Q. Where is the written order appointing you?

A. I have it in El Paso.

Q. Did you sign orders withdrawing money from the bank for the army?

A. I signed orders together with the other two generals—approved the orders with the other generals.

Q. Was the three million pesos collected?
A. No; only two million two hundred thousand pesos, more or less.
Q. Were lists prepared of the people to pay the tax, and the amount to be paid by them?
A. Yes, all the lists were made and existed of the most prominent people.
Q. Where are those lists now?
A. In Torreon, they should be.
Q. Was Manuel M. Martinez & Company included in that list?
A. Yes, naturally.
Q. When people paid their taxes were receipts given to them?
A. Yes, sir; everybody.
Q. Was it part of your duty to know who paid their tax?
A. No, it was not.
Q. What was done in the case of those who failed to pay the tax?
—. The commission delivered their lists, with a report of those who did not pay the taxes, and they were then taken to the military headquarters.
Q. The lists of those who did not pay were taken?
A. Yes; lists of those who did not pay.
193 Q. Was your office at the military headquarters?
A. No; I was in the Casino.
Q. What was done in the case of those who did not pay the tax?"

Mr. Houston: That is our general objection.
Mr. Enright: The special objection there is the question was objectionable in referring to a tax as involving a conclusion, there being no evidence that there was a tax and this particular question is immaterial, irrelevant and incompetent. The question assumes that there was a tax.
Mr. Platt: It is very well defined as to what it was.
The Court: It has been denominated a tax all through this testimony.
Mr. Platt: Yes, but it is perfectly explained what it is, so there is no question what is meant.
The Court: I will overrule the objection.

"A. Orders were issued from the military headquarters to arrest those who did not pay; they were ordered to appear personally in the headquarters; these people were called personally; those who did not pay the contribution were summoned to the military headquarters; in those cases where the contributions could not be collected, orders were given to dispose of their property, merchandise and other objects that they could realize money out of.

By Mr. Ewell:

Q. Do you know whether any such order was given in the case of Martinez & Company?
A. Yes.
194 Q. Did you yourself receive any order as to Martinez?

A. No.

Q. Did you have anything to do with the seizure of Martinez' property?

A. Only to pass the order; to give the order, rather, to pass the order of General Villa.

Q. What was the order?

A. To dispose of all the merchandise of Manuel Martinez that was found in that region.

Mr. Enright: Was that order in writing?

By Mr. Ewell:

Q. Was that order in writing?

A. By telegram.

Q. About when did you receive this telegram?

A. I do not remember; it was a late date, maybe the last days of November; I am not certain. I did not receive the order. All the intervention I did see was to pass this telegram on to the man in charge.

Q. Did you have this telegram in your hands at one time?

A. It came to the military headquarters in Torreon.

Q. Where was General Villa at that time?

A. North of Torreon near the border.

Q. Was he in the City of Torreon?

A. No; very far from there.

Q. Did you read this telegram?

A. I saw it in the headquarters.

By Mr. Enright:

Q. Did you read it?

A. Yes.

By Mr. Ewell:

Q. To whom was the telegram addressed?

A. To the Chief of the Division; to the military commander.

By Mr. Enright:

Q. What was his name as named in the telegram?

195 A. To Conreras—it was addressed to Contreras.

By Mr. Ewell:

Q. What did you do with regard to seizing property of Martinez & Company?

A. That was a matter of the military knowledge.

Mr. Enright: I suppose he means by that that he did not have anything to do with it; that is the inference; if it is the fact, let him say so.

By Mr. Ewell:

Q. Did you yourself receive any telegram in regard to hides of Martinez & Company?

A. I received a copy of the telegram that was addressed to the military commander, and I had to know when the money was deposited in the bank in the name of the Constitutionalists.

Q. What money?

A. Of all the money that could be realized of those parties who did not pay contributions, for example, like Martinez.

Q. From whom did you receive this copy of the telegram?

A. From the Chief of Staff of General Villa.

Q. Who was that?

A. I do not remember just now; the telegram was signed General Villa.

Q. What did you do after you received this telegram?

A. I was on the alert to know when any of the property came in.

Q. Did you send any telegram for the seizure of Martinez' hides?

A. On receipt of that telegram I sent my order to the military commander at San Pedro; I passed the telegram of General Villa to the military commander, where instructions were given to return those hides.

The Witness: I passed on the telegram I received to the
196 military commander of San Pedro.

By Mr. Ewell:

Q. How did you pass it on, by wire or messenger?

A. I did it by telegraph.

Q. What were the contents of the telegram?

A. That I had received a telegram from General Villa giving those instructions for the Commander.

Q. Did you send that telegram to Colonel Santos at San Pedro?

A. Yes, sir.

Q. You signed your name to the telegram?

A. I signed the telegram; I signed in the name of the Commission of Finance.

Q. And at that time were you the Chairman of that Commission?

A. At that time I was appointed as Chairman of the Commission; there were two; there were two chiefs of that commission, and as per agreement I was the one appointed to send this telegram.

Mr. Enright: And by this Commission of Finance does he mean the Commission that was appointed at this last meeting of one hundred people or so in Torreon?

By Mr. Ewell:

Q. Who else were on this committee besides you and the other chairman?

A. Nobody else, only we two. We represented Gen. Villa and the representatives of the people were four or five citizens.

Q. Who was the other chairman?

A. Viliareal.

Q. Who were the five citizens on that committee?

A. There were four. The Agricultural Commission—Pedro Ugarte was chief of that Commission, with three or four others under him. The chief of the Commission of Banking was the agent of the National Bank and the agent of the Bank of London, the agent of the Bank of Laguna, the agent of the Bank of
197 Coahuila and the agent of the Germanic Bank, these were the persons that composed the Commission on Banks.

Q. What were your duties and the duties of the other chairman?

A. To see that these persons delivered to the National Bank of Torreon the moneys; that was our obligation, to see that these people delivered the moneys to the bank and to pass over a list to the commanding general of those who did not pay the contributions.

Q. And did it also include the duty to look after the seizure of the property of those who did not pay?

A. Andres Faries was chief of the commission on Commerce, and an attorney by the name of Casillas was also on the Commission on Commerce, and two or three more. The Commission of Industry was composed of—I don't remember who was head of the Committee, but there were four or five prominent people who composed this Commission of Industry, owners of industries, factories, etc.

Q. Was that so of the other two commissions, were there four or five prominent citizens on each of those four commissions?

A. Yes.

Q. And did those commissions fix the amount of the tax to be paid by the people in their class?

A. Yes, sir.

Q. After you sent this telegram to Col. Santos at San Pedro did you receive any reply from Santos?

A. Yes.

Q. What did he say?"

Mr. Houston: That is the general objection that it is immaterial and irrelevant.

"A. That he had in his possession the merchandise belonging to Manuel Martinez and as per instructions of Gen. Villa the goods were—that agreeing with Gen Villa's instruction the goods were on their way to El Paso.

198 Q. What time was that? What date?

A. Probably the latter part of November or the first part of December.

Q. Did the Constitutionalists leave Torreon about the 10th of December, 1913?

A. I don't know exactly, because I left three days prior.

Q. Where did you go from Torreon?

A. To Chihuahua.

Q. Do you mean the City of Chihuahua?

A. Yes, the City, yes.

Q. At that time was the City of Chihuahua in possession of the Constitutionalists?"

Mr. Enright: That is the same objection that has been ruled on before, that it is incompetent and within the general objection as to relevancy.

The Court: Overruled for the same reason.

Mr. Enright: Objection.

"A. I don't know exactly the day, but I think it was. I was delayed six days in reaching Chihuahua, and when I entered it was in possession of the Constitutionalists.

Q. Did you go on the railroad from Torreon to Chihuahua?

A. Yes, sir; by railroad.

Q. And was the railroad operated by the Constitutionalists?

A. Yes, it was under control of the Constitutionalists.

Q. And then did you go on later to the City of Juarez?

A. Yes; three days later I went to Juarez.

Q. Was that in December of 1913?

A. I don't remember; I think it was about the last days of December.

Q. Did the Constitutionalist Government at that time have a governor of the State of Chihuahua?"

Mr. Enright: Same objection.

199 The Court: Same ruling.

Mr. Enright: Objection.

"A. When I entered, when I was there, it was already in possession of Gen. Chao, who was then military governor. He was chief of the army that entered at that time, and later Gen. Villa took charge of that as governor personally; one or two days later Gen. Villa came in and took possession as governor.

Q. And did the City of Chihuahua have a mayor and other city officials at that time?

A. The Federals left installed there as governor Fredericio Moye.

Q. What do you mean by the Federals left there this governor?

A. They had to evacuate in a hurry and didn't want to leave the populace there alone.

Q. Did the Constitutionalists recognize the Huertista governor?"

Mr. Enright: Objected to as calling for a conclusion, and as immaterial and irrelevant.

The Court: I will sustain the objection.

Mr. Platt: The answer to that is not read. Then it is repeated.

"Q. Was there a mayor of the City of Juarez?

A. Yes.

Q. In all of these places—Torreon, Chihuahua and Juarez, was Constitutionalist money in circulation?

A. Yes.

Q. Did they have a post office?

A. Yes; they always received mail from foreign countries.

898

Q. Did the Army of the North, of which Gen. Villa was commander, have jurisdiction over the entire State of Chihuahua?"

200 Mr. Enright: Objected to as involving a conclusion and incompetent, whether the army of the north had jurisdiction.

The Court: I will overrule the objection to which you may have an objection.

Mr. Enright: Objection.

"A. Yes; with the exception of Ojinaga, which was later taken over, captured.

Q. Since January, 1914, has the City of Torreon been recaptured by the Constitutionalists?

A. It was.

Q. And has Mexico City been entered by the Constitutionalists since then, since January, 1914?"

Mr. Houston: General objection.

"A. Yes, and they are there now.

Q. And have all the Huertista armies been disbanded?"

Mr. Enright: Objected to as incompetent and no foundation laid, and as hearsay.

201 The Court: I will sustain the objection, because I do not see that it is necessary for him to so testify.

"Q. What position do you hold with the Constitutionalist Government to-day?

A. I am president of the Bank of the State of Chihuahua.

Q. Is that a Government bank?

A. Yes; the Government has certain intervention.

Q. I show you Defendants' Exhibit 4 for identification and ask you if those two seals are the seals of the Constitutionalist Government?"

Mr. Enright: That is your bill of sale, isn't it? Go ahead.

Mr. Platt: The question is whether it is competent. If you insist upon the objection I will prove it otherwise. Do you insist?

Mr. Enright: I say go ahead.

"A. This (referring to the right hand impression) is the seal of the Division of the North.

Q. Who was Pablo Alvarez?

A. He was chief of staff.

Q. Do you know whether that is the signature of Pablo Alvarez?

A. It seems to me it is.

Mr. Houston: That is objected to, no foundation having been laid.

Mr. Enright: Objected to as incompetent and no foundation laid.

The Witness: Yes, I know the signature of Pablo Alvarez.

Mr. Enright: You have seen him write?

The Witness: Yes.

By Mr. Ewell:

Q. Did Gen. Venustiano Carranza know and approve of
202 the seizure of the hides of Martinez?

A. I spoke with Gen. Carranza and he approved of the seizure of these hides.

By Mr. Enright:

Q. When did you speak with Gen. Carranza?
A. The last time he passed through Juarez.
Q. When was that?
A. When he passed from Sonora to Chihuahua.

By Mr. Houston:

Q. About when was that?
A. I have a bad memory.

By Mr. Enright:

Q. Well, about when?

Mr. Ewell: Was it when I was down there in Juarez?
The Witness: Yes, the same time.
Mr. Enright: About March, 1914, is that?
Mr. Ewell: About March.
The Witness: On recommendation of Mr. Ewell I saw Gen. Carranza.

By Mr. Ewell:

Q. On recommendation or suggestion?
A. Mr. Ewell solicited—Mr. Ewell asked whether I knew if Gen. Carranza approved of this."

203 "Cross-examination.

By Mr. Enright:

Q. And when Mr. Ewell asked you that, you went to see Gen. Carranza?
A. Yes.
Q. And you asked Gen. Carranza then whether he approved of the seizure of these hides?
A. Yes.
Q. What did you say to Gen. Carranza?
A. That on that date Gen. Villa had ordered the disposition of those hides for the necessities of the war.
Q. That is what you said to Gen. Carranza? You told Gen. Carranza that on a certain date Gen. Villa had ordered the disposal of the hides?
A. He had ordered the sale or disposal of these hides on account of the war, on account of the necessities of the war.
Q. And is that all you said to Gen. Carranza?

A. He asked to know why these hides had been disposed of.

Q. Gen. Carranza did?

A. Yes.

Q. And then what did you tell him?

A. That Martinez had not paid his contribution or his taxes and that Gen. Villa had given those instructions.

Q. What instructions?

A. To gather in all the merchandise.

Q. And then after you told Gen. Carranza that what did he say?

A. That they had done very well.

Q. And that is the first thing Gen. Carranza knew about these hides?

A. Yes, sir; that is the first notice he had received.

Q. Mr. De la Garza, how many taxpayers were in the City of Torreon before the capture of the City by Gen. Villa in October, 1913?

A. There were 40,000 inhabitants. A great part those 40,000 were the taxpayers. The owners of rural property, real estate,
204 were the greater number. They paid less, owners of real estate; the greater part of the contributions were the agricultural and the banking.

Q. How many people lived in the Laguna district?

A. About 125,000.

Q. Give us in a general approximate idea about how many taxpayers there are in the Laguna district, about?

A. Ten or fifteen thousand.

Q. And that was about the number of taxpayers who resided in the Laguna District at the time that Villa captured the District, wasn't it?

A. Yes.

Q. Now, you say that Gen. Villa, when he captured Torreon and got control of the Laguna District, demanded 3,000,000 pesos. How do you know that?

A. In my house they knew me as a man of Constitutional ideas; some prominent people came into my house for shelter, and these people came to me asking me to see Gen. Villa in order to avoid disorders in the City and to avoid all kind of scandals.

Q. In other words, looting, is that it?

A. Yes.

Q. Now, these people who came to your house in hiding or for protection, as you have said, were afraid that Villa's soldiers would loot their property, weren't they?

A. Yes, they had great fears for their own lives, because they were Huerta sympathizers.

Q. And they had fear for their lives and for their property?

A. These Huerta sympathizers, of course they had fears, but they were unfounded, because nothing was done to anybody, and in proof of that the three days they were locked in my house nothing was done to them, and on the third day they were the ones who told me to see Gen. Villa.

Q. They were rich men, weren't they that came to your house?

A. Yes, for example, one of them is the agent of the

205 Bank of Laguna, M. de la Pena; Rafael Aldape Quiroz, and Mr. Berlanger, one of the most prominent citizens there.

Q. When they first came there, whether they had reason for it or not, they were in fear for their lives, weren't they?

A. Yes, they had fears, because a lot of people had left there and they were there alone.

Q. Do you know why these people were in fear for their lives?

A. Because they were Huertistas.

Q. So you were selected to go to Gen. Villa and find out what terms could be made so that these people would be safe in their lives and property, isn't that so?

A. My mission was only to see what Gen. Villa's intentions and ideas were.

Q. And you did go to see Gen. Villa, didn't you?

A. Yes, the third day after I went to see him; on the third day of Gen. Villa's entrance there I went to see him.

Q. And what did he tell you?

A. I asked Gen. Villa what was it he wanted, what did he desire. That is what I said to him.

Q. And what did Gen. Villa say to you?

A. That he wanted 5,000,000 pesos.

Q. And what did you say to Gen. Villa?

A. I went back to give the news to the other gentlemen that were in the house.

Q. What did Gen. Villa say he would do if he got the 5,000,000 pesos?

A. Gen. Villa told me that he wanted 5,000,000 pesos, and I answered him back that it was too much. He said he needed that money to capture all the northern part Chihuahua, and he would return the money afterwards.

Q. Did Gen. Villa say anything about whether your friends would be safe in their lives and property if they paid that sum of money?

A. Nothing was mentioned of these men that were in my house.

206 Q. In this first talk you had with Gen. Villa did he say anything——

A. (Interrupting.) They were safer in my house than in the American Consulate there.

Q. But they would not have been quite so safe if it was known they were there?

A. They didn't go out, but they were in the rooms of my house.

Q. In this talk you had with Gen. Villa, was anything said about whether the citizens of the City would be protected against looting if this money was paid?

A. Gen. Villa told me that he wanted that money to capture all the northern part of the country, and that if he didn't get that money he would see a way that he would get it.

Q. In what way did he say he would get it?

A. That he had various ways to get it.

Q. Did he mention any of these ways?

A. No.

Q. You understood that they were uncomfortable ways, didn't you?

A. Yes; not very agreeable. The persons in the house were never threatened.

Q. Gen. Villa didn't know they were in your house, did he?

A. He knew afterwards. There were over $30,000,000 of merchandise stored away in warehouses at that time, and that is the reason he didn't pay much attention to the people. In the German Bank and the National Bank—in these banks the greater part of this money was deposited, and merchandise and cotton was also stored away there, and they were all respected, all this merchandise was respected; only at the last minute $3,000,000 was demanded, and only $2,000,000 was turned over, $2,200,000. As I stated, $3,000,000 was demanded, but only $2,200,000 was turned over.

Q. At this time Villa's soldiers were on guard at these different warehouses and banks where this merchandise was stored, weren't they?

A. Yes, they were stationed there and they were stationed
207 in front of banks and warehouses on request of the owners.

Q. Now, you went back to your house after Villa demanded 5,000,000 pesos and told your friends there, and they said that was too much, didn't they?

A. Yes, they said it was too much, it was tremendous, too much; it was not possible.

Q. What amount did your friends name?

A. My friends suggested it would be better to get all the taxpayers together in the Casino and discuss the matter there, and it was there it was agreed on 3,000,000 pesos.

Q. After you first reported to the people in your house, did you go back to Villa with the suggestion that 3,000,000 pesos might be raised before this public meeting was held?

A. No; from there these men left for the Casino and started their discussion. I did not return to Gen. Villa. These men first agreed when they met in the Casino on 2,000,000 pesos, but Villa said no, he wanted not less than 3,000,000.

Q. How long a time was this meeting going on in the Casino, about how many hours?

A. It took eight days to come to an agreement. The banks in the meantime were paying daily moneys that Villa demanded, and then this money was returned to the banks after this collection was made.

Q. Now, you say that you turned over to the military headquarters a list of the people who did not pay.

A. The four branches that I have already mentioned delivered a list with the names of those persons who had not paid their contributions.

Q. And delivered those lists to you in the first place, didn't they?

A. To me, yes; and then I passed them on to the military headquarters with the statement that they had not paid, that it had not been possible to collect these.

208 By Mr. Houston:

Q. This is the list that didn't pay?
A. Yes.

By Mr. Enright:

Q. And then the military commander sent out and arrested the people who did not pay, or such of them as he could find?
A. He gave orders that these people present themselves at the military headquarters.
Q. That is a polite way of saying arrest, isn't it?
A. Yes.
Q. What was done with those people who were invited to come to headquarters or arrested for not paying their contributions?
A. An order was issued that if they didn't pay within twenty-four hours their contributions would be doubled; they would have to pay double.
Q. Some of them paid, I suppose, on that threat?
A. All that were there paid.
Q. That is, all the people who were arrested paid?
A. There were some people that couldn't pay and they did not pay.
Q. Those people who could pay and who were found so as to be arrested, were they kept under arrest until they did pay?
A. No, they were let go, because they were acting in good faith.
Q. Well, I mean those people who were able to pay and who had the money to pay?
A. They were let alone until the contributions were paid.
Q. But the contributions were doubled?
A. They were doubled if they were not paid within those twenty-four hours.
Q. There were some, I suppose, that weren't paid even when doubled within twenty-four hours?
A. Yes, there were cases.
Q. And what happened to them?
A. They seized their personal property, the merchandise, not real estate, that which could be readily sold.
209 Q. They tried to sell some real estate, didn't they?
A. Yes, but nobody would buy it.
Q. They tried to sell Martinez' house, didn't they?
A. No, they never tried to sell that.
Q. Are you sure of that?
A. Yes, I am sure of that; in case they should decide to do that they would give them away, make presents of them.
Q. Confiscation?
A. Yes.
Q. Do you know of your own knowledge whether Martinez was notified to come to headquarters for failure to pay his tax, of your own knowledge?
A. Yes, that is well known; because that applied to all prominent persons.

Q. You assume that because this rule applied to all prominent persons that it must have been applied to Martinez?
A. The civils did that.
Q. Do you know of your own knowledge?
A. Yes I know; everybody, it was done the same; in that contribution everybody was equal.
Q. You didn't see Martinez arrested, did you?
A. No; but I knew where he was in hiding.
Q. Did you see him in hiding?
A. I saw his sister, saw his family.
Q. But during all this time he was in hiding you didn't see him personally, did you?
A. He was there but I didn't see him.
Q. That is, he was in hiding and you knew he was in hiding because you had seen his sister, is that it?
A. And I saw him during the first few days.
Q. You didn't see him under arrest, did you?
A. He was never arrested, he arrested himself.
Q. That is Martinez arrested himself?
A. I knew where he was.

By Mr. Houston:

Q. Martinez was never taken to headquarters, was he?
210 A. Never, no; when they went to look for him they could not find him.

By Mr. Enright:

Q. How do you know that?
A. I knew that because they were looking for him with great care, because he was one of the enemies there, one of the greatest enemies at that time, one of the Huertistas.
Q. And who was looking for him?
A. Everybody was looking for him, everybody that had anything to do with him was looking for him.
Q. Everybody that had anything to do with the Villa's hearquarters?
A. With the Commission was looking for him.
Q. Were the soldiers looking for him?
A. Yes, independently they were looking for him.
Q. And when you say they were looking for him independently, they had a different purpose than the Commission, didn't they?
A. As a Huertista.
Q. And what did they want to do with him?
A. The same procedure that they did with the other Federals.
Q. What was that? Shoot him?
A. Generally they don't shoot him; they only shoot when they are fighting, in combat.
Q. You say the soldiers were looking for Martinez to do the same with him that they did with the other Federals?

A. They did the same as the rest of them, as the others.
Q. Well, what was that?
A. As a Huertista.
Q. Well, as a Huertista what were they going to do to him?
A. Because he was an employe, he had interventions in the elections there.
Q. What were they going to do with him after they got him?
A. I don't know what they could have done with him. I had no intervention in military affairs and so do not know. I was only in the financial end of it. If Mr. Martinez had attended this
211 summons to headquarters he would have been offered all the guarantees the same as the rest were from time to time.

By Mr. Ewell:

Q. These guarantees of life, you mean?
A. Of everything;

By Mr. Edwards:

Q. Life and property?
A. Life and property, everything.
Q. And his property was safe if he paid his share?
A. Yes.

By Mr. Enright:

Q. And if he didn't pay neither his life nor his property would be safe, would it?
A. I don't know that. They all complied with the obligations they had agreed upon.
Q. In other words those that were caught paid up and those that weren't caught could not be punished?
A. There were many of them that did not pay and nothing was done to them.
Q. Isn't it true that some of the people who were called on to pay didn't have the money to pay?
A. Some of them may be didn't have it, and others made believe they didn't have it.
Q. How much was Martinez down on this list for. How much money?
A. I did not note it, because it was not my business.
Q. But it was your business to turn in the list of people who had not paid, wasn't it?
A. They were very many; I didn't take notice; the notes are still there.
Q. Where?
A. In Torreon; they should exist there; I don't know; everybody knows about this.
Q. When was it you had this talk with Mr. Ewell, along about March in this year, wasn't it?
A. I don't recall exactly.

212 Mr. Houston: It was March, wasn't it?

Mr. Ewell: Yes, it was March; it was right along the time Gen. Villa was fighting his second fight against Torreon.

Q. Have you been in Torreon since you had this talk with Mr. Ewell?

A. Yes.

Q. About how many people were on these lists for contributions?

A. They were very large lists; I don't remember how many persons were on the list?

Q. Well, about how many?

A. I haven't an idea; it was a considerable number, but I did not have anything to do in this matter.

Q. A hundred?

A. No; many more.

Q. Five hundred?

A. I haven't any idea, as I had nothing to do with this.

Q. Didn't you see the list?

A. I had opportunity of seeing the lists; I saw several lists."

"Redirect examination.

By Mr. Ewell:

Q. Was the Financial Commission looking for Martinez in order to collect from him his share of this tax?"

"A. They looked for him on several occasions, and notices were left with his sister so that he would present himself.

Q. Were the soldiers looking for Martinez because he was an active Huertista?

A. Gen. Villa suspended all prosecution during the time that these commissions were determining the taxes, but after they did look for him.

Q. Was Martinez a rich man?"

213 "A. He is known as such.

Q. You stated that this tax was 3,000,000 pesos and some 800,000 pesos were not collected?

A. That is true; 800,000 pesos were not collected, also 500,000 pesos of that which was turned over to the banks for collection was never collected. This money was delivered to the banks and they gave them foreign drafts and were never collected, that is, 500,000 pesos, because during that time the Federals again took Torreon.

Q. Was that 500,000 pesos in addition to the 800,000 pesos or included in it?

A. That was money they had already collected of the 2,200,000 pesos, that the banks stole from them.

By Mr. Edwards:

Q. Then the bank collected 2,200,000 pesos; they turned over 1,700,000 pesos and kept 500,000 pesos.

A. They gave foreign drafts for 500,000 pesos, which were not paid.

By Mr. Ewell:

Q. Then the amount of the Martinez unpaid tax was included in the 800,000 pesos?

A. It was included, yes.

Q. And an order was given for the seizure of the property of those who failed to pay their tax?"

Mr. Enright: I object to it as being incompetent proof.

214 "A. Yes, that is what I know."

Recross-examination.

By Mr. Enright:

Q. This order for the seizure of the property of those who didn't pay was an order in writing, wasn't it?

A. I don't just recollect, because that wasn't my business.

Q. That matter is not within your own personal knowledge, is it?

A. Absolutely not, because it was a military matter. I have no knowledge of that.

Q. You have said in answer to Mr. Ewell that notice was given to Martinez requiring him to pay some sum of money."

Mr. Enright: Perhaps at this point I should make a motion to strike out the previous testimony of this witness as to the order of seizure.

The Court: I will now strike it out on the testimony now appearing. I did not have that before me of course, at the time the question was put and ruled upon. Go back to it, so you are sure.

215 Mr. Enright: The question on the preceding page, "and an order was given for the seizure of those who failed to pay their tax." It was answered "yes, that is what I know."

The Court: To which there was an objection entered at the time the question was read by you, and I overruled the objection then. Now, because of the appearance of these answers in the cross examination of the same witness, whereby it would appear that he had nothing on which he could have based an answer to that question, it is asked that the question on the direct examination be stricken out.

The Court: I recognize your motion to strike out and I will strike out.

(Mr. Enright continues reading as follows:)

"Q. You have said in answer to Mr. Ewell that notice was given to Martinez requiring him to pay some sum of money. How do you know that yourself?

A. The same was done with everybody; it was done equal to everybody.

Q. And that is the reason you say notice was given to

216 Martinez, because it was given to everybody else?

A. I know that several requests were sent to his house.

Q. How do you know it?

A. Especially on Martinez who was one of the men that disappeared. That is the reason I know; from the first Martinez was not found.

By Mr. Ewell:

Q. Was a notice left with a sister of Martinez?
A. It was left in the house where his sister was.

By Mr. Enright:

Q. How do you know that?
A. I am very sure, and I know all the family and they are my friends.
Q. Did his sister tell you a notice was left there?
A. I didn't have anything to do with that; they spoke to me because they knew I had good relations with the Constitutionalists.
Q. His sister spoke to you?
A. I saw her several times, but I had nothing to do with them; I saw his wife several times.
Q. You didn't leave the notice yourself at the house?
A. I had nothing whatever to do with them.
Q. And you didn't see anybody else leave the notice?
A. They told me several times, persons on the commission, that they sent these requests.
Q. And that is all you know about it?
A. That is all I know about it. The members of the Commission told me Martinez was not there."

Mr. Enright: On the strength of that cross-examination, I move to strike out the preceding testimony given by the witness as to the service of the notice on Martinez.

Mr. Platt: If the court please, it is cross examination. It
217 is hearsay testimony, but he has brought it out.

The Court: There does not appear to have been any objection to these questions that you are now asking to have stricken out at the time they were made.

Mr. Enright: No, sir.

Mr. Platt: I do not know of any testimony that has been admitted over any objection.

Mr. Enright: It did not appear when the testimony was given.

The Court: I understood there was an objection on the record to the question I have now stricken out.

Mr. Enright: Yes.

The Court: Therefore it was proper to strike it out. But I have not heard any objections to any of these questions you are asking to have stricken out.

Mr. Enright: No; and in the nature of things there could not be an objection. When the witness assumes to have universal knowledge and testifies to a thing as a fact, why, it does not appear until you have cross examined him and discover that his knowledge is hearsay.

The Court: Well, I will decline to strike out that testimony.
Mr. Houston: Objection.

(Mr. Enright continues to read as follows:)

"By Mr. Ewell:

Q. Was it notorious that he was not there?
A. Oh, part of his family was in the house. They all knew the facts.

218 "By Mr. Enright:

Q. Was Martinez at this meeting in the Casino you have told about?
A. There were several meetings there, and I don't know whether he was present at any of them or not.
Q. You don't recall seeing him at any of them?
A. No.

By Mr. Edwards:

Q. Was his brother there or any of his relatives?
A. His brother-in-law was there.

By Mr. Ewell:

Q. Was his brother-in-law named Anastacio Chappa?
A. I don't know the name, but I know him very well.

By Mr. Enright:

Q. He has several brother-in-laws, hasn't he?
A. I don't know."

Mr. Platt: I will read the deposition of W. LEE FIELD, taken on behalf of the defendant Central Leather Company, on the 14th day of August, 1914, before Mr. Carpenter, a Master in Chancery:

"Direct examination.

By Mr. Ewell:

Q. What is you- full name?
A. W. Lee Field.
Q. Where is your residence?
A. El Paso, Texas.
219 Q. Are you connected with the Finnigan-Brown Company?
A. Yes, sir.
Q. In what capacity?
A. I am treasurer and assistant manager.
Q. How long have you held those positions?
A. Why, about six years now; since the organization of the company, 1909, I think it was.

Q. In what state was the Finnigan-Brown Company incorporated?
A. Texas.
Q. Is it registered to do business in Mexico?
A. Yes.
Q. What is the business of the Finnigan-Brown Company?
A. Buying hides and skins.
Q. And selling?
A. Buying and selling hides, skins, hair and other products of such nature.
Q. In connection with the company have you, from time to time, made trips into Mexico?
A. Yes, sir; many times.
Q. Where were you from February, 1913, to January, 1914, giving places and dates, as nearly as possible?
A. You say from February, 1913, to January 1914?
Q. Yes.
A. Well, it is pretty hard to go back and give exact dates covering a year's time, but I was in El Paso and I made several trips to Mexico during that period.
Q. What trips into Mexico did you make prior to September, 1913?
A. I made a trip to Chihuahua sometime during the summer of 1913.
Q. In whose possession at that time was the City of Chihuahua?"

Mr. Enright: That is the general objection of immateriality and irrelevancy; further objection that conditions in Chihuahua are immaterial to this issue, which concerns political conditions in Terron.

The Court: I will overrule the objection.

220 Mr. Enright: Ask an objection.

The Court: You may have it.

A. Why at that time the City of Chihuahua was in the control of the government known as the Huerta government.
Q. When you went to Chihuahua from what point did you leave?
A. From El Paso.
Q. What point in Mexico?
A. Juarez.
Q. In whose possession was Juarez at that time?

Mr. Houston: Same objection.
The Court: Same ruling.
Mr. Houston: Objection.

A. Well, Juarez was under Federal control under the Huertistas at that time."
Q. What other trips did you make into Mexico prior to September?
A. I don't remember of any other trip prior to September into the interior, but I was in Juarez nearly every day.
Q. Did you go to Torreon?

A. Yes, when I came back from Chihuahua I came out by Torreon and Eagle Pass.

Q. Do you know about what time in 1913 this trip of yours was made?

A. I can't remember the exact date just now.

Q. Was it in the summer?

A. In the summer, probably in June or July. I don't know the exact date.

Q. And at that time in whose possession was Torreon?

A. In the possession of the Huertistas.

Q. Do you know the distance from Juarez to Chihuahua?

A. Yes, about 225 miles by rail.

Q. Is that all in the State of Chihuahua?

A. Yes, sir.

221 Q. What compass direction is the City of Chihuahua from Juarez?

A. South.

Q. How much further is it from the City of Chihuahua to the southern boundary of the State of Chihuahua?

A. It is about—Chihuahua is about in the centre of the state; it is about the same distance to the southern boundary as it is to the northern boundary, on the railroad.

Q. What is the distance from the City of Chihuahua to the City of Torreon?

A. About 325 miles I think.

Q. What state is Torreon in?

A. Coahuila.

Q. What part of the state is it in?

A. I don't remember exactly, it is——

Q. Well, the southern or the northern?

A. No, in the northern—in the northwestern, I think, isn't it?

Q. What state is Eagle Pass in?

A. Eagle Pass is in Texas.

Q. Well, right across the border from Eagle Pass?

A. You mean what is the place right opposite Eagle Pass?

Q. Yes.

A. Piedras Negras.

Q. What state is that in?

A. That is in Coahuila, I believe.

Q. Was the Finnigan-Brown Company shipping freight over that railroad at that time, or about that time?

A. Yes, we made shipments, from time to time.

Q. After you came back, then when did you again go into Mexico?

A. I made a trip to Hermosillo, Sonora, in September, I believe it was.

222 Q. At what point did you go into Mexico in September, 1913?

A. Nogales.

Q. Is Nogales on the border between the United States and Mexico?

A. Yes, sir; it is a border town, Nogales, Arizona and Nogales, Sonora, across the border from each other.
Q. Did you get a pass to go into Mexico?
A. Yes, sir, *was* got a passport.
Q. From whom did you get it?
A. From the office they had established for the purpose of issuing passports to travelling men; I don't know who signed it. I don't remember the person who signed it.
Q. Where did you get it, I mean, what was the office?
A. Why, they called it—something like an immigration office they called it in Spanish, that is what it would be.
Q. What party ran this office?
A. The Constitutionalists.

Mr. Houston: Motion to strike out the question and answer on the ground that the witness has not shown any competent knowledge and the further ground that the evidence is incompetent, irrelevant and immaterial.
Mr. Platt: He was there.
Mr. Enright: He did not know what party was in charge.
The Court: I will decline to strike it out.
Mr. Houston: Objection.

Q. Do you know who control the railroad from Nogales to Hermosillo?
223 A. The railroad from Nogales to Hermosillo is owned by the Southern Pacific Company, but at that time it was operated by the Constitutionalists, as well as I remember.
Q. What is the distance from Nogales to Hermosillo?
A. About 175 miles.
Q. Does the railroad run entirely in the State of Sonora?
A. Yes, sir.
Q. How long were you in Hermosillo?
A. About a week.
Q. Was there a soldier guard on that train?"
"A. Yes.
Q. To what party did those soldiers belong?"

Mr. Houston: Objected to as incompetent, irrelevant and not shown to be within the knowledge of the witness.
The Court: I will overrule the objection.

"A. Constitutionalists.
Q. Do you know General Carranza?
A. Yes, sir.
Q. On this trip to Sonora did you see him?
A. I did.
Q. Where?
A. In Hermosillo.
Q. Did you have any business with him?
A. Not with him personally no.
Q. Did you visit any government buildings in Hermosillo?

A. Yes, I was around all over the town, in most of the public buildings, the post office municipal building——

Q. Do you know where Carranza had his capital at this time?

A. Well, the capital was where ever Carranza was; at that time it was in Hermosillo while he was there.

Q. Were there soldiers in the City of Hermosillo?

A. Yes, there were some soldiers in Hermosillo, not a great many.

224 "By Mr. Ewell:

Q. Did you see any police on the streets in Hermosillo?

A. Yes, sir.

Q. Did you see any school houses?

A. Yes.

Q. Were the schools running?

Mr. Enright: From your own knowledge, now.

225 A. Well, I saw school children going back and forth on the streets with school books and if they weren't going to school they couldn't be carrying books back and forth. I didn't go into the school houses.

Q. Do you know how large a city Hermosillo is?

A. Well, under normal conditions Hermosillo is about 20,000.

Q. Do you mean that it was less when you went there?

A. Probably some less than that, yes, because a lot of people joined the army.

Q. Did you send any letters by mail?

A. Yes, sir.

Q. Did you receive any?

A. Yes, sir.

Q. Did you use the telegraph?

A. Yes, I sent telegrams over from Hermosillo to the head office at El Paso."

"Q. Did you get postage stamps at the post office?

A. I bought stamps there when I could find stamps there for sale.

Q. Do you remember what those stamps said on them?

A. No, I do not.

Q. Were the street cars running in Hermosillo?

A. Yes, sir.

Q. Were the stores and hotels open?

A. Yes, sir.

Q. On this trip into Mexico what kind of money did you use?

Mr. Enright: This last trip that he is talking of? The trip from El Paso to Hermosillo?

Mr. Ewell: Yes.

226 Mr. Enright: Entirely in the State of Sonora?

Mr. Ewell: Yes.

A. I used what is known as Constitutional money.

Q. Where did you get that money?
A. Why, I got some of it in Nogales and I got some of it in Hermosillo.
Q. Did you exchange American money for it?
A. Sometimes I would as I needed money for current expenses I would exchange gold, yes."

"By Mr. Enright:

Q. How much of this Constitutionalist money did you get for a dollar of American gold?
A. I think it was about three for one at that time; I wouldn't say positively.
Q. Wasn't it more than that?
A. I honestly don't remember, but my recollection is that the value of that money at that time was about three for one. At that time, you know, there was some what we called National Bank money in Mexico in circulation; in buying railroad tickets or in paying hotel bills, why there was Constitutionalist money and the other, they were all considered the same; if you went in a hotel and put down a bill, a ten dollar National bank bill, you would probably get back some change at the same ratio in Carranza money; there was all Carranz money in circulation there at this time.
Q. And Federal money, too?
A. Yes, that is what I am talking about, national bank bills."

"By Mr. Ewell:

Q. By "Federal money" you mean money which was in
227 circulation during Madero's administration?
A. Yes, sir.
Q. And during Huerta's administration?
A. The same money which was always in circulation in Mexico, under Diaz, Madero and Huerta.
Q. The so-called Federal money in circulation was the same under Diaz, Madiero and Huerta administrations, wasn't it?
A. Yes, that is the same money; we call it bank bills or the national currency.

By Mr. Enright:

Q. And that was in circulation down in Sonora along with the Constitutionalist money?
A. Yes, both kinds of money were in circulation at that time.

By Mr. Ewell:

Q. And was American money in circulation down there at that time?
A. Naturally, American money was coming in; they would take American money in with them.
Q. How many cents about did you pay for one peso of Constitutionalist money?

A. As I said before, my recollection is about three to one.
Q. What is the ratio in normal times between Mexican and American money?"
"A. Well, the prices have been fluctuating during the last two or three years, but before there was any revolution in Mexico the value of the Mexican peso was around 48 or 49 cents.

By Mr. Enright:

Q. What is the par value of a peso?
A. Well, it is supposed to be——
Q. One dollar?
228 A. No, it is supposed to be 50 cents; that is what they tried to hold it about, that is two for one.
By Mr. Ewell: Did you see any people drunk while you were in Sonora?
A. I don't believe I noticed anybody very drunk down there.

By Mr. Enright:

Q. Have you seen anybody drunk in New York since you came up here?
A. Yes, I did, I saw one fellow last night.

By Mr. Ewell:

Q. Did these soldiers that you saw have uniforms?

A. Yes, they had, some of them were uniformed and some of them were not.

By Mr. Enright:

Q. The officers were all uniformed, weren't they?
A. Yes, the officers were uniformed.

By Mr. Ewell:

Q. What flag did the Constitutionalists carry in the army?
A. They carried the Mexican National flag.
Q. The same as carried by the Huerta forces?
A. Yes. When they take a town they always fly the Mexican flag from the quarters and public buildings."

"By Mr. Enright:

Q. Did they not use any other flag to distinguish their faction?
229 A. No more than the brigade and division flags and of course the banners, but the Constitutionalist army uses the National flag of Mexico.
Q. How do they tell their troops apart from the Federal troops?
A. Well, they can tell them all right.
Q. Well, how? You are qualifying as an expert.

A. Well, they tell them—they could tell them by the uniforms, they could also tell them by their general appearance. If you were to strip one of them and put one here and one there, stripped stark naked, I could tell which is which.

Q. How do you do it? What is the distinction?

A. Different types of men; the Federal soldiers (and I am talking of the common soldier now, not of the officers, you understand, but of the common soldiers), the Federal soldiers are usually small dark colored and got their hair cut pretty short and the most of them are men that have been taken out of the prisons and put into the army; and the Constitutionalists, as a rule, are men from the mountains who had been farmers and stock raisers. It is very easy to tell the different types of men.

Q. The distinguishing uniform is largely a matter of hair cut, isn't it?

A. No, I wouldn't say that exactly. I wish I had some photographs here, I could show you.

By Mr. Ewell:

Q. What is the distinction in uniform?

A. The Federal uniform is, of a common soldier, a blue uniform, and the Constitutionalists have adopted a khaki uniform, something similar to that used in the United States by the troops.

By Mr. Enright:

Q. And the blue Federal uniform is the same uniform that
230 the Federal forces wore during the administrations of Diaz and Madiero, isn't it?

A. Yes.

By Mr. Ewell:

Q. What material is that blue uniform made of?

A. I don't know."

"Q. When you went into Sonora was your baggage examined by the customs officials?

A. Yes, sir.

Q. By the Constitutionalists?

A. Yes, sir, they were examined by the same authorities when I came out.

Q. Did you see any United States consuls in Hermosillo?

A. No.

Q. Or any place in Sonora?

A. No; I am not acquainted with the consul in Nogales, but I had him pointed out to me on the street as the American consul.

Q. Did you use this Constitutionalists money in paying your railroad fare?

A. Yes, sir.

Q. And hotel bills?

A. Yes, sir.

Q. Then you came back to El Paso?
A. Yes, sir.
Q. By the same way you went?
A. Yes, sir.
Q. When did you next go into Mexico?
A. I went to—you mean in Mexico—you mean into the interior—I went——
Q. How long were you at El Paso after your return from Sonora?
A. Well, I didn't go into the interior of Mexico again until some time in December.
Q. Were you at El Paso in November?
A. Yes, sir.
Q. Were you going across the boundary——
A. Now, wait a minute, listen—just let me think just a minute. No, that is right.

231 Q. Did you, during this time, make trips across the boundary to Juarez?

A. Yes, nearly every day.
Q. Do you know when Juarez changed hands from the Federals to the Constitutionalists?"
"A. Yes, sir, about the first of December, 1913.
Q. Did they have a fight there down in Juarez?
A. Yes, sir.
Q. Did you hear the fighting?
A. Yes, sir.
Q. Did you see any fighting?
A. No, the fight was all over when I got over there.
Q. Do you know the actual date of the capture of Juarez?
A. I think it was December 1st. It was the first part of December, anyway, the first few days of December.
Q. But you are not sure of it?
A. Yes, I am sure it was about the first of December, not later than the fifth of December, anyway. You know we didn't keep any diary of these things; we didn't expect to have to remember all these dates where every fight and every trip *we* made, and it is pretty hard to remember a year back what you did on a certain date or what happened on a certain date, unless you made a record of it.
Q. After the capture of Juarez did you see Francisco Villa?
A. Yes, I saw General Villa.
Q. When did you see him?
A. I saw him the morning after Juarez was captured, and during the night.
Q. You knew him personally?
A. I had never seen him before up to that time.
Q. Have you seen him since that time?
A. Yes, a few days later I got acquainted with him and I have seen him frequently since then.

232 Q. Did you do any business with him?

A. Yes.
Q. On behalf of the Finnigan-Brown Company?
A. We made a contract with him for some hides.

Q. Were you present when that contract was made?
A. Yes.
Q. Where was it made?
A. In Juarez, at his headquarters.
Q. Was any seal put on that contract?
A. Yes, sir.
Q. Where was that seal put on it?
A. It was put on in General Villa's office, by his secretary.
Q. Was General Villa in command of the army in that section of Mexico at that time?"

Mr. Houston: Objected to as incompetent. The witness is not shown to have any competent knowledge.
The Court: I will overrule it.

"A. Yes, sir.
Q. Did you deal with him as the head of that army?

Mr. Enright: I object to the form of that question.

A. If you had been there at that time you would not have any doubt about him being in command. Any man who was there would have known very well that he was the commander, all right, all right.

Q. Was he notoriously in command?
A. Yes, notoriously is a good word.
Q. Are you familiar with the Constitutionalist seal they used?
A. Yes, I have seen it used many times.
Q. Do you know Major Alvarez?
A. Yes, sir.
233 Q. Who is he?
A. He is Major on Villa's staff, or was, at that time.
Q. Do you know his handwriting?
A. Well, I would not——
Q. Have you seen him write?
A. I have seen his signature, yes.

By Mr. Enright:

Q. Have you seen him write?
A. Yes, I have seen him write."

"By Mr. Ewell:

Q. Is there a quartel in each city?
A. Yes, sir.
Q. You have examined this defendant's exhibit 4 for identification. Are the seals which appear on that paper the same as those to which you have testified?
A. Yes, sir; that is, I testified that I have seen the same seal on other documents in the quartels.
Q. To the best of your judgment, is that the signature of Alvarez?

Mr. Enright: I object to that as incompetent, the witness having testified that he cannot identify that as his signature.

Q. Yes, from my judgment that is the signature, from my honest belief that Pablo Alvarez signed that instrument.

234 By Mr. Houston:

Q. What is that?
A. My belief is that that is Pablo Gonzales' signature.

By Mr. Ewell:

Q. Alvarez?
A. Alvarez, I should say.
Q. Now did you make a trip into Mexico subsequent to September?
A. Yes, I went to Chihuahua in the latter part of December, about the 20th, I think, about the 20th of December, 1913.
Q. Did you get a pass from the Immigration Department?
A. Yes, I got a passport in Juarez from the authorities there.
Q. You bought a railroad ticket?
A. Yes, sir.
Q. Do you remember what that railroad ticket said on it?
A. What it said? No. It simply read, "Good for one passage from Juarez to Chihuahua."

By Mr. Enright:

Q. As a matter of fact, you don't remember anything more what was on that railroad ticket than you remember what was on that railroad ticket that you used coming up here to New York?
A. Sure, I remember that. The ticket called for a trip from Juarez to Chihuahua.

By Mr. Ewell:

Q. Did it have anything on it to indicate who was operating the railroad?

Mr. Enright: I object to that question as leading and immaterial.

Q. Do you remember?
A. Why, my recollection is that the tickets used then were the old form tickets used by the National Railways of Mexico.
Q. At that time was the Finnigan-Brown Company shipping any freight on that railroad, that is, during the month of December?
A. Yes.

235 Q. With whom did you deal in connection with the freight?
A. Why, with the agent of the railroad.
Q. Do you know who was operating the railroad?
A. The Constitutionalists were operating the railroad.

Mr. Houston: I suppose it is understood that our same objections stand against this testimony, as to occurrences, political and other

conditions, in Chihuahua in December, 1913—the same objections as we made to the same line of inquiries as to Hermosilla and other parts of Sonora?

Mr. Ewell: Yes.

Q. How long were you in Chihuahua?

A. At this time I was there four or five days.

Q. When you came back did you go to the Immigration Department to get a passport?

A. No, I did not.

Q. Wasn't a pass required?

A. A pass was required, but in the meantime I had seen General Villa and he had given me a general pass signed by himself, which was good anywhere.

Q. Where did you see him?

A. In Chihuahua.

Q. Whereabouts in Chihuahua did you see him?

A. In the Governor's palace. You mean at this time, at the time he gave me this passport?

Q. Yes.

A. Yes.

Q. Did you send any letters back to El Paso from Chihuahua?

A. Yes.

Q. Did you receive any?

A. Yes, I received letters.

Q. Did you use the telephone?

A. In the City of Chihuahua, yes.

Q. Were the street cars running?

A. Yes.

Q. Did you see Constitutional money on this trip?

A. Yes, we used—I started out with Federal money, with
236 National Bank money, but in Chihuahua they were using Constitutional money. You understand, this money question down there was in a very bad way at that time, it was a very scarce article down there at that particular time, and most any kind of money was good.

By Mr. Enright:

Q. Anybody who had real good money kept it out of sight, didn't they?

A. No, I wouldn't say that.

Q. When you bought hides from Villa you had to pay him in gold, didn't you?

A. Not always.

Q. You didn't pay him in Constitutionalist money, did you?

A. I did, yes, sir.

By Mr. Ewell:

Q. Did you see any police in the City of Chihuahua?

A. Yes, sir. While you are on that, you asked me if I bought any hides and paid in Constitutionalist money, didn't you?

Mr. Enright: Yes.

A. I made one payment to him amounting to some $13,000, not to him but to the State Treasurer, and took their Constitutionalist money down to the Treasury and they received it in payment for those hides.

By Mr. Enright:

Q. At what par exchange?
A. The price was in Mexican money.
Q. That was one of the terms of the contract?
A. No, the contract did not state what kind of money, it simply said, as I remember, I don't know as I remember the price exactly right now, but it said so much per kilo, and I paid them at that price in Constitutionalist money.

237 By Mr. Ewell:

Q. Were stores open in the City of Chihuahua?
A. Yes, sir.
Q. Were street cars running?
A. Yes, sir.
Q. What motive power had the street cars?
A. Electric.
Q. Did you ride on the street cars?
A. Yes, sir.
Q. Did you pay in Constitutionalist money?
A. Yes, sir.
Q. Did you have any dealings at all with any Governor of the State of Chihuahua?
A. Yes, I went up to see Governor General Chao at one time.
Q. Did you have any dealings with any City Government?
A. No, I didn't have any dealings with any City Government.
Q. Where did you see Governor Chao?
A. In the Governor's mansion, the Governor's palace.
Q. In Chihuahua?
A. Yes.
Q. Is the City of Chihuahua the capital of the State of Chihuahua?
A. Yes, sir.
Q. Did you go any further to the south into the State of Chihuahau than the city?
A. Not on that trip.
Q. What is the population of Chihuahua?
A. Well, I should say 35,000.
Q. Then you came back to Juarez and El Paso?
A. Yes.
Q. How long did you remain at El Paso?
A. I came back to El Paso, I think, on the 24th of December, and left there again on the 29th of December, to Chihuahua.
Q. Did you go to Chihuahua on the 29th?
A. I left El Paso on the 29th and arrived there on the 30th.

Q. Did you go by railroad?
A. No, I went on an automobile at that time.
238 Q. What condition was the road in?
A. Which road?
Q. From Juarez to Chihuahua?
A. The railroad, you mean?
Q. No, the road that the automobile went on?
A. Well, in what condition, how do you mean?

Mr. Houston: Was it kept up?

A. Yes, the road was pretty good.

By Mr. Houston:

Q. It was the same road that was there during the preceding administration, wasn't it?
A. Yes, the same road.

By Mr. Edwards:

Q. Kept in order?
A. Yes, sir.

By Mr. Ewell:

Q. What towns did you go through?
A. I went through the Town of Guadaloupe, and the Town of Villahumade, and through the Town of Montezuma——
Q. And Sauz?
A. Sauz and Sacramento.
Q. Were there soldier guards in those towns?
A. Yes, sir.
Q. Constitutionalists?
A. Yes, sir.
Q. Were the people at work?
A. Yes, everything was going on about as it always does in Mexico.

By Mr. Enright:

Q. What is that?
A. They were going about like they always do in Mexico. They don't care much for work.

By Mr. Ewell:

Q. Have you had any dealings with the United States Consuls in Mexico?"

Mr. Enright: Objected to as immaterial and irrelevant.
239 What possible relevancy can that have, if he had any dealings with consuls down there?
The Court: I cannot tell. I will overrule the objection at present.
Mr. Enright: Objection.

"A. Yes, I have had dealings with Consul Edwards in Juarez.
Q. When, if you know?
A. Oh, very frequently, getting invoices certified.
Q. What months?
A. Well, every month.
Q. From October 1, 1913, to date?
A. Yes, the months of October, November, December and other months up until now, and for the last several years.
Q. On this last trip to Chihuahua about which you have spoken, did you go further south than the City of Chihuahua?
A. I took a little automobile trip out south to some little outlying departments around there, but no further trip into the interior; I went on a hunting trip one afternoon 15 or 20 miles out of town.
Q. In order to clear up the record I will ask you this: Were you in Juarez when the hides in this suit were bought?
A. No, sir; I was in Chihuahua at that time."

Mr. Enright: The cross examination begins at this point, and I think the greater part of it is taken up in trying to get from the witness a statement of the relations between the Finnigan-Brown Company and the Central Leather Company which was afterward covered by the deposition of another witness. I therefore do not care to offer this.

"Q. Have you been purchasing hides generally from Villa, or the Constitutionalists?
A. We purchase hides from anybody that has got them to sell.
Q. How recently have you been purchasing from the Constitutionalists?
A. Well, we bought from time to time in Juarez and Chihuahua, since they have been in control of that section of the country. I am not in a position to say offhand just how many.
Q. Take this first contract that you negotiated yourself, does that cover anything else but hides?
A. No, sir.
Q. Cattle hides?
A. Cattle hides only.
Q. Dry hides or green hides?
A. Green hides.
Q. Green hides entirely?
A. Yes, sir.
Q. Since then you have been familiar with other purchases by your company from the Constitutionalists?
A. Yes, we have made other purchases from them since then.
Q. Dry hides?
A. Yes, sir.
Q. Green hides?
A. Yes.
Q. Horse hair?
A. Yes.
Q. Goat skins?

A. Yes, sir.

Q. All this time you knew that Villa was not a dealer in hides, didn't you?

A. How do you mean we knew he was not a dealer in hides?

Q. He was not a purchaser of hides was he?

A. Well, these hides were not all from Villa.

Q. Who else were they from?

A. Buying them, as I told you, from anybody that would have them to sell.

Q. What other Constitutionalists were you buying from?

A. Well, there is always somebody bringing in hides to Juarez and they come over to see the different dealers in El Paso and sell them to whoever would give them the best prices for them.

By Mr. Edwards:

Q. It is an open market?

A. Yes. We have been in business in Mexico ever since the organization of the Finnigan-Brown Company, and we have bought hides from anybody that sold them.

By Mr. Enright:

Q. I am not asking about that. I am asking about purchases that you made from the revolutionary leaders down there.

A. Yes. I would have to have our books to remember each particular purchase; I don't remember off-hand.

Q. Take this first contract you negotiated with Villa, personally; did you go over and look at the hides?

A. No, because the hides were—there was a contract for hides from cattle that were to be slaughtered, that the cattle had not been slaughtered at the time the contract was made.

Q. That was a contract to cover a considerable period of time?

A. Yes, to get green hides that were to be killed in the restros.

Q. Did you personally make any purchases from these revolutionary officers of hides that had been seized by them?

A. No, not that I know of.

Q. There were several other purchasing agents of your company, weren't there?

A. Yes, we have agents all over the country.

Q. Do you know who made this—What individual connected with your company made this purchase from Villa that is in suit here?

A. Why, Mr. Brown, I think, made it.

Q. Frank W. Brown?

A. Frank W. Brown, yes.

Q. You didn't have anything to do with that purchase at all?

A. No, I was in Chihuahua at that time.

Q. When you made that contract with Villa there wasn't anything said then about his having other hides on the way, or anything of that sort?

A. No, I don't remember him saying anything about it at that

time, for the reason that there was nothing said in that contract whatever except for the green hides from the municipal restros in the State of Chihuahua; nothing said about either hides, goat skins or anything else at that time.

By Mr. Edwards:

Q. What do you mean by "restros"?
A. A restros is what we call a slaughter house.
Q. They are municipal slaughter houses in the various towns of Chihuahua?
A. Yes, sir.
Q. In different parts of the State?
A. Yes.
Q. Under whose control were those slaughter houses?
A. They were under the control of the Government.
Q. What government was that?
A. The Constitutionalist Government.

By Mr. Houston:

Q. You knew that personally?
A. Yes."

Mr. Platt: Now yesterday, if the Court please, you remember there was a stipulation and I left out the testimony of Aurialiana S. Gonzales?

The Court: I remember there was one portion that you did not read.

Mr. Platt: I am going to read this:

"AURELIANO S. GONZALES:

I am a citizen of Mexico. My residence is 1313 Aldama Street, City of Chihuahua, State of Chihuahua, Mexico. I am a lawyer by profession. I received a diploma from the Mexican Government and was admitted to practice law in Mexico many years ago. I have been actively engaged in the practice of law since my admission. At one time I was judge of the highest court in the State of Chihuahua. I have made a special study of the law of Mexico in regard to the seizure and confiscation of enemy's property and the levy of forced war taxes in times of war. There is no special written law or statute now in force in Mexico defining or prescribing the rights of the Government or of contending parties during a state of war, to levy forced war taxes or to confiscate enemy's property. In all of the Mexican wars however, this has been done. During the war of the French Intervention, Benito Juarez, being invested with extraordinary powers, and also, at that time, all personal guarantees having been suspended by decree of the General Congress, confiscated certain properties belonging to the enemies of his government. Previously, during the Civil War of Reform, Benito Juarez decreed that the properties of the Catholic Church belonged to the Nation. During all of our wars the contending parties have disposed of the properties

of their respective enemies and levied forced war taxes in order to meet the expenses of carrying on the war. In my opinion, said war taxes and the seizure and confiscation of said properties were legal under the law of Mexico and good title was acquired by the Government under whose authority the seizure and confiscation were made. The rules of conduct of our armies in times of war have been determined by "La Ordenanza General" (General Law), the principles of international law, and the instructions for the American Army, which, as I understand, were issued during the "Guerra Separtista" (American Revolutionary War)."

Mr. Enright: I move to strike out the last, as being absolutely immaterial, whether the seizures made by Benitio Juarez two or three generations ago were legal. If this is material at all it must be confined to the locality and the particular procedure by which they claim title to these hides, and this expert is simply assuming to give an opinion that acts which occurred in other wars which were brought to a conclusion, and out of which a government resulted recognized by this government, well known to all the world, were legal acts.

The Court: What have you to say about it?

Mr. Platt: I take it that is a proper expression of opinion by an eminent lawyer of Mexico on what the law of Mexico is in respect to seizure. It is true that he has to a certain extent illustrated it and stated it by illustrations, but he does express what is the law in that way. It seems so to me.

The Court: I will tell you, gentlemen, how I am going to dispose of it. I am going to withhold passing upon the question and hold over until that time when I shall hear you on your other motion under your general objection, because very likely both of them can be disposed of at the same time. I am not passing on it either one way or the other. I will leave it under abeyance until I hear you upon the other objections, which undoubtedly I will hear you upon at the conclusion of the case. I will give you what is known as a general objection to this class of testimony and I will hear you at that time on this same question. For the present it will stand.

CHARLES ROUSSEIL BARANCO, called.

By Mr. Platt:

Q. Do you talk the Spanish language and the English language?

A. Yes.

Q. Do you know the meaning of the words "Guerra Separatista" as they appear at the end of this statement of Aurieliana Gonzales?

A. Yes.

Q. Do you know what that means in Spanish?

A. In the American History, the War of Secession.

Q. Are those the words that are used in the Spanish language to refer to the American War of Secession?

A. Yes.

Q. You mean the war of 1861?
A. Yes, not the Revolution.

Cross-examination.

By Mr. Enright:

Q. What are the words in Spanish used to describe the American Revolution?
A. "La Revolucion"—the same spelling, but t instead of c.

Mr. Platt: I will state on the record that the defendant claims title to the hides in suit through the seizure by the Constitutionalists and the sale to Finnigan-Brown Company at Juarez, and claims no better title than that of the vendor in that sale.
Mr. Enright: I accept that as an admission.
The Court: Let it be entered on the record.
Mr. Platt: Now, if the Court please, I offer in evidence, so as to make the record complete, the message of President Wilson of August 27, 1913, being President's Address to Congress on Affairs in Mexico, House Document No. 205, being found in the Congressional Record, Senate Proceedings of that date, volume 50, part 4, pages 3803.

Paper marked Exhibit D-16.

I offer also in evidence the President's Annual Address of December 2, 1913, being found in volume 51 of the Congressional Record of that date, at page 48.

Paper marked Exhibit D-17.

I also offer in evidence the Proclamation known as Document number 1263, the Proclamation of President Wilson, on the date of February 3, 1914, on the subject of Exportation of Arms or Munitions of War to Mexico.

Paper marked Exhibit D-18.

I also offer the President's Address, House Document number 910, of April 20, 1914, found in the Congressional Record of that date, volume 51, page 7442.

Paper marked Exhibit D-19.

I also offer the Resolution of Congress for the purpose of identifying it I refer to the resolution which was passed by the House of Representatives on April 22, 1914, and which appears in full in the Congressional Record of that date, in the House Proceedings, vol. 51, page 7611; and the proceedings on the passage of that resolution by the House on page 7612; and the Report of its signature by the President, appearing on page 7855 of the Congressional Record of April 12, 1914. That is Joint Resolution Number 251.

Paper marked Exhibit D-20.

I offer also two letters of October 21st, from the Acting Secretary of State, signed by the Acting Secretary of State, being Mr. Lansing—the same man whom I criticised yesterday, but then he was only solicitor when I criticised him; now he is Acting Secretary of State.

These are two letters from the Department of State, dated October 21, 1914, addressed to Mr. Henry F. Herberman, Washington, D. C.; and with your permission, Mr. Enright, I will state that Mr. Herberman is a lawyer, an assistant of mine in my office, who went to Washington for the purpose of getting this information. I do not know as it is necessary to mark these for identification or not. I will have them marked.

Papers marked Exhibits D-21 and D-22.

Of course it would not be necessary to have any of these public documents marked. That is our case.

Mr. Houston: You did not offer all these proclamations—President Taft's proclamation and so forth.

Mr. Platt: I left them out, Mr. Houston, because I did not think they bore on it. I have not the slightest objection to putting them in.

Mr. Enright: Never mind.

Defendant rests.

240 Mr. Platt: Now, I offer a stipulation, dated October 7, 1914, between counsel in this case, and I will have it marked for Exhibit D-7.

Paper marked D-7.

The Court: There is no objection.

Hearing none.

Mr. Enright: There is no objection as to competency, but there is some objection as to materiality and relevancy.

Mr. Platt read as follows:

"It is hereby stipulated and agreed that Alonzo L. Taylor, Graham Bailey, Frederico Gonzales Garza and Aureliano S. Gonzales, if produced at the trial of the above cases, would testify to the facts set forth under their respective names hereto annexed. It is further stipulated, that said testimony may be used in the trials of the above cases subject to the same objections as if the said witnesses were produced at the trials thereof and the plaintiff shall have the right to object to the competency or relevancy of any part thereof on every ground."

Mr. Platt: These were taken to avoid sending a commission down to El Paso to take depositions.

Mr. Platt read deposition as follows:

"ALONZO L. TAYLOR.

I am agent of the Finnigan-Brown Company at the City of Chihuahua, State of Chihuahua, Mexico. I have lived in the State of Chihuahua for twenty-eight years. In July, 1913, I saw Francisco Villa at Ascension, in the State of Chihuahua, near Casas Grandes. Ascension is in the northern part of the State of Chihuahua. General Villa was in command of the Constitutionalist Army at
241 that point and had just defeated the Huertistas at Casas Grandes. In November, 1913, I again saw General Villa at the City of Juarez, which is located in the northern part of the State of Chihuahua, opposite the City of El Paso, Texas.

On behalf of the Finnegan-Brown Company, I made a contract, on December 1st, 1913, with General Francisco Villa, as Commander of the Army of the North of the Constitutionalists, for the purchase of hides in the State of Chihuahua. The contract was put in writing and was to continue for six months. The contract was signed in my presence by Francisco Villa at the Quartel of the Constitutionalist Army in the city of Juarez. It was also signed by Adrien Benevides, the Secretary of the Quartel. I was present when both General Villa and Mr. Benevides signed this contract. This contract was for green hides.

General Villa at this time told me that the Constitutionalists had six or eight cars of dry hides which they wished to sell, said cars being down the line of the railroad. I told Mr. Frank W. Brown. Subsequently Mr. Brown told me to help transfer hides at Juarez. That was in the first week of January, 1914. I helped in weighing, counting and transferring the hides. Mr. Brown and other representatives of the Finnigan-Brown Company were present, and Major Pablo Alvarez, Captain Moyes and Col. Rudolfo Fiero of the Constitutionalist Army were present with us and checked the numbers and weights of the hides. I remember seeing on certain of the hides which were transferred at this time a mark in black paint, namely, the letter M inside a diamond. The cars from which these hides which were so marked were taken I remember were padlocked, and the padlocks were rusted. The hides had evidently been in the
242 cars a long time. One door was a little cracked open and the hides had been bleached from the sun. There were also dead bugs around the hides. After the hides were transferred and the weights had been checked, Mr. Brown and I went to the State National Bank in El Paso, and got gold there, which we took to Juarez in an automobile. Major Alvarez and Captain Moyes were present with Mr. Brown and me when we got the gold and went to Juarez. Mr. Brown and I took the gold to the headquarters of General Francisco Villa in the City of Juarez, where we delivered the gold. General Villa being present in person. General Villa said he wanted a bill of sale and receipt made out in proper form. He suggested that I make it out, as I knew how. General Villa knew that I had been educated in a college at Mexico City. I then went back to El Paso and drew a bill of sale. Defendant's Exhibit 4 for identification is the bill of

sale which I drew. I then returned to Juarez with the bill of sale for the purpose of having it signed by General Villa. I went to his headquarters, but was told that he was having a Council of War. I then took the bill of sale back to Mr. Brown. Later I saw the bill of sale signed by Major Alvarez."

"GRAHAM BAILEY.

I am bookkeeper for the Finnigan-Brown Company, and have been since its organization in 1909. I live in El Paso, Texas. When the hides were bought from the Constitutionalist Government in the first part of January, 1914, I remained at the Finnigan-Brown Company office in El Paso.

Mr. Brown and other representatives of the Finnigan-Brown
243 Company came to the office each day and handed to me slips of paper which showed the number, weight and kind of hides and I made entries in the books of the Finnigan-Brown Company from these slips. While at the office in January I saw Major Alvarez, Captain Moyes and Colonel Fierro, officers of the Constitutionalist Army, talking with Mr. Brown and checking lists of the weights and numbers of the hides. On several occasions I have turned money over to the Constitutionalist Government on account of contracts between the Government and the Finnigan-Brown Company.

I have paid the money to Lazaro de la Garza, the Financial Agent, who has signed a receipt. Then I have taken the receipt to the Quartel General, where the Constitutionalist seal has been put on by Francisco Gonzales Garza, secretary at the Quartel. I show you three such receipts, one dated March 16, 1914, another March 13, and another March 20. On November 2, 1913, I left El Paso and went through U. S. to Nogales in State of Sonora, Mexico. Nogales is on border of Arizona. I left Nogales November 4th in morning on the Pacifico de Sur de Mejico (Southern Pacific) for Hermosillo, capital of Sonora, about 180 miles. At Nogales I got a pass at the Quartel General, which was signed by a Constitutionalist Colonel. The railroad was operated by the Constitutionalists. The run from Nogales to Hermosillo was about 12 hours. Nogales is about 6,000 population, and Hermosillo about 14,000. We passed through some fair sized places like Magdalena, about 4,000. I got to Hermosillo on night of November 4th. I returned to Nogales on November 18, reaching El Paso on the 19th. I was all the time in Hermosillo except for a 2 days' trip to Maytoreno, about 60 miles south from Hermosillo, where I left the railroad. The railroad from here went to
244 Guaymas, which was in possession of the Huertistas, for which reason the railroad was not in operation into or out of Guaymas. I then went to Cruz de Piedras by wagon, 19 miles Then I returned to Hermosillo. Gen. Carranza was in Nogales and Hermosillo. The mule car lines were running. The electric lights were running. I used telegraph, telephone and post office. There was music in the plaza. The stores were open. There was good order wherever I went. All Sonora except Guaymas was in possession of Constitutionalists. There were Constitutionalist soldiers in all the towns."

"FREDERICO GONZALES GARZA.

I am secretary at the Quartel General of the Constitutionalist Army in the City of Juarez, State of Chihuahua, Mexico. The Quartel General is the headquarters of the Constitutionalist Government. The Commander-in-Chief of the Constitutionalist Army in this district has his headquarters and transacts his business at the Quartel General. It is one of my duties as such secretary to keep in my custody the seal of the Constitutionalists and to affix said seal, under the direction of the Commander of the Army and his assistants, upon contracts to which the Constitutionalist Government is a party, and other official documents of the Government. The two seals which appear on Defendant's Exhibit 4 for identification are official seals of the Constitutionalist Government. Said seals are and always have been in the exclusive custody of the secretary of the Quartel General."

245 FRANK W. BROWN, sworn.

Direct examination.

By Mr. Platt:

Q. Mr. Brown, where do you live?
A. El Paso, Texas.
Q. How long have you lived there?
A. Over thirty years.
Q. Are you an officer of the Finnegan-Brown Company?
A. I am its vice president.
Q. Is that a corporation of the State of Texas?
A. Texas corporation, yes, sir.
Q. What is the business of that company?
A. Buying and selling hides, pelts and animal by-products.
Q. When was the company organized?
A. On or about the 9th of January, 1909.
Q. Where are its headquarters?
A. At Houston, Texas, and El Paso, Texas.
Q. Where does that company buy hides? Where does it do business?
A. West Texas, New Mexico, Arizona and Northern Mexico.
Q. Was it doing business in Mexico from say the beginning of 1913 down through the rest of that year?
A. It was.
Q. Who did you do business with in Mexico?
A. With the various parties who had the goods to sell.
Q. Now did you in 1913 at any time cross the Rio Grande River from El Paso to Juarez?
A. Many times.
246 Q. When you say many times, how frequently?
A. Why, as business would call me, sometimes two or three times a day and sometimes I would not go for a day or two.
Q. But all through the year you went constantly?
A. Yes, sir.

Q. Were you buying hides in Juarez during that period?
A. When was this, please?
Q. First say from February, 1913, to October, 1913.
A. We were, yes, sir.
Q. Were you attending to this business personally?
A. Why, only as having a general supervision of the general business. No, sir, I was not buying them personally.
Q. You were not personally making the contracts; you had men under you that did that?
A. Yes, sir.
Q. Now, during that period, and say down to October, 1913, did you see soldiers there?
A. Yes, sir.
Q. And soldiers of what army were they?
A. They were Huertista soldiers.
Q. Were the Huertistas or Federalists or Federals as they call them in charge of the city of Juarez at that time?
A. Yes, sir.
Q. It was in their possession?
A. Yes, sir.
Q. Now were you in El Paso at the time of the capture of Juarez by the Constitutionalists?
A. The last capture by Villa?
Q. Yes.
A. I was, yes, sir; I was in El Paso.
Q. When did that take place?
A. The night of the 15th of November, 1913.
Q. You heard the fighting, did you?
A. I did, yes, sir.
Q. Where were you?
A. I was in bed when it started and I went downtown and down to the river as far as I could go until I was stopped by the United States soldiers.
247 Q. That was a night attack, wasn't it, and was finished in the morning?
A. It started about two o'clock.
Q. In the night?
A. Yes, sir, at night.
Q. And the battle was over before morning?
A. Finally wound up about 7:30 in the morning.
Q. Did you go to Juarez after the battle?
A. I went along that day, some time during that day.
Q. That was to say on November 15th you went there?
A. On the 16th, I think.
Q. On the 16th. What did you see there? Did you see soldiers?
A. There were soldiers there, yes.
Q. What soldiers did you see there in control then?
A. Constitutionalistas.
Q. Now since that time, since the capture, have you been in Juarez often?

A. Sometimes many times a day and sometimes—that is, when I was in El Paso. I have been away from there considerable.

Q. During all that time you have seen Constitutionalist soldiers there?

A. Yes.

Q. What did you see the soldiers doing there? Were they in barracks or what were they doing?

A. Some in barracks and some walking around the streets, some on guard different places.

Q. Acting as police?

A. I think not. The police were regular policemen that were appointed.

Q. Well, since the capture have you seen police doing duty in Juarez?

A. There are regular policemen there, regular police force.

Q. During that time how about the street cars? Are the street car lines there?

A. The street car is a belt line from El Paso to Juarez, over one bridge and return over the other.

Q. And running through the town of Juarez?

A. Yes.

248 Q. What did you observe as to the street cars?

A. They run regularly on a ten-minute schedule.

Q. How about the telephone and the telegraph, were they in use in Juarez during this same time?

A. The telephones were in use and the telegraph was in use, except it was in bad repair, and sometimes it would be out of repair for half a day until the lineman could find the break, but it was in use.

Q. Who was running the telephone and the telegraph?

A. The telephone was run by the El Paso Exchange—it is all one exchange—but the telegraph was run by the Constitutionalist Government.

Q. During this time since the capture have you frequently used the telephone and telegraph in Juarez?

A. Yes.

Q. Both of them?

A. Yes, sir.

Q. Has there been good order in that town?

A. Perfect order.

Q. Now how about the schools?

A. The schools were opened immediately after the Constitutionalista took possession, the schools were opened.

Q. And been running ever since?

A. Yes, sir.

Q. Are they public schools?

A. Yes, sir; they are national schools or state schools.

Q. Do you know General Francisco Villa?

A. Yes, sir.

Q. You know him well?

A. Yes, sir.

Q. How long have you known him?
A. About four years.
Q. Now when you went into Juarez on the 16th of November, 1913, did you see General Villa there then?
A. I did.
Q. See him that day?
A. Yes, sir.
Q. Where did you see him?
A. I think at his headquarters at the Custom House.
Q. Were you in the Custom House with him?
A. Just for a few minutes.
249 Q. Did he say anything to you at that time about hides or buying hides?
A. He said he wished to see me about the purchase of some hides, but they were very busy and would see me later.
Q. Did he tell you he had any hides—that the government had any hides to sell?
A. He said that they had some hides to sell.
Q. What did you do then; did you make an appointment with him?
A. I did make an appointment with him, yes, sir.
Q. Did you keep that appointment or did you see him personally?
A. Mr. Taylor and Mr. Fields kept that appointment—employes.
Q. They are employes of your company?
A. Yes, sir.
Q. Do you know whether a contract was made between the Finnegan-Brown Company and the Constitutionalist Government at about that time in relation to hides?
A. There was a contract made on December first; I was not present at the time the contract was made.
Q. You were away from El Paso at that time?
A. I was in St. Louis, Missouri.
Q. You were gone about how long?
A. I was in St. Louis on Thanksgiving Day and had been there several days and remained there several days after that, but I do not just remember the time.
Q. I show you a paper and ask you whether that is the contract to which you have just referred?
A. Yes, sir; that is the contract turned in to me by Mr. Fields—into the office.
Q. Now do you know whether that signature to that contract is the signature of General Villa?
A. I have seen his signature——
250 Q. Mr. Brown, you observe those revenue stamps on there. Are those stamps that were placed on it by your company and cancelled by your company?
A. That is a rubber stamp that is used in our office as cancellation according to law; they would not have to be cancelled.
Q. No; I am asking now not about the rubber stamp of cancellation, but I am asking you whether those are revenue stamps of the Constitutionalists?

A. Those are Constitutionalista's internal revenue stamps, documentary stamps.
Q. Such as you have to place on all documents?
A. Yes.
Q. And such as you frequently use?
A. Yes.

The Court: That would be subject to your same objection, I suppose—same general objection?

Mr. Enright: Same general objection.

251 The Court: It is to show the condition of the business transactions and such like in Mexico and the dealings with the Northern Chief. I will permit it, subject to the same objection, Mr. Enright, that you had to all this testimony.

Paper marked Exhibit D-8.

Mr. Platt: I offer the translation as marked D-9.

Paper marked Exhibit D-9.

Mr. Houston: I think, for the sake of the record, we ought
252 to have the objection to the testimony of the witness as to these being revenue stamps that they have to put on documents of this character. It seems to me there has been no foundation laid for that by the witness.
Mr. Platt: The witness says he has done this business right along down there. He is a man who would know.
Mr. Houston: It is a conclusion of the witness as to their being revenue stamps.
The Court: I will overrule that objection, and you may take an objection.
Mr. Houston: Objection.

Q. Mr. Brown, I will ask you the question again. Is that signature on this document Exhibit D-8 known to you?
A. This one?
Q. Yes.
A. Yes.
Q. Whose signature is that?
A. General Francisco Villa.
Q. Now, have you bought and had delivered to you any hides under that contract?
A. Many.
Q. Well, what do you mean by many—measured in the number of hides or in money—approximately?
A. Many carloads.
Q. Many carloads?
A. Yes.

Mr. Houston: I suppose that is all subject to the same objection?
The Court: Yes.

Q. Were they delivered during the whole period of the six months of the contract?

A. Yes, sir.

Q. Now, after December 1, 1913, did you have any other dealings with General Villa as Commander-in-Chief of the Division of
253 the North?

A. Yes, sir.

Q. What?

A. On the last day of December, 1913, or the first of January, I bought some eight carloads of stuff from the Government through him.

Q. You say "stuff"; you mean hides?

A. Yes; hides and kindred merchandise.

Q. Just state to the jury, please, the circumstances and details of that transaction, Mr. Brown? You are referring now to the transaction that—to the hides in this case?

A. Yes, sir.

Q. Now just state in your own words and in detail what occurred in regard to that sale and transfer of those hides?

A. On or about the last day of December there came to the Finnegan-Brown office in El Paso two parties whom I afterwards knew to be Major Paiblo Alvarez and Captain Moise of the Constitutional Army, stating they wished prices on hides in Mexico. I told them we better go over to the Quartel General and talk our business over there, and then they stated General Villa had sent them over, and I went over and finished the business with General Villa at the Quartel, or at his headquarters in front of the Quartel General, and I talked with General Villa some time and he said——

Q. Did you go more than once?

A. Twice.

Q. To the Quartel?

A. During that day—in the morning and in the afternoon. He said that he had brought ten cars of hides up on the train; that two of them he thought were our property and the other eight cars were the property of the Government and he wished to sell them, wished to dispose of them. After talking some time he stated that he was very busy, he would like to have me return promptly at three
254 o'clock in the afternoon, and I returned at three o'clock in the afternoon, and Mr. Taylor, an employe, was with me, and I think Mr. Newton; we there agreed on a price for these hides, and he says, "Major Alvarez will attend to the delivering of the hides," and he says, "I will leave it to you and Major Alvarez." The next morning Major Alvarez and I went to the station agent; Major Alvarez ordered him to spot the cars, and I went to the Southern Pacific Railroad in El Paso and got a string of eighteen cars to take over for these goods and some more goods which were coming up on the train that night. There were eight cars of this Government goods—Constitutional government goods—hides—spotted on one side of a platform and eight empties spotted on the other, and we weighed, counted and transferred the goods out of the eight cars, and after we weighed, counted and transferred them—we had va-

rious employes of mine there counting and weighing and checking, and the Government had Major Alvarez, Captain Moise and Rudolph Fiero, Junior, who was a son of General Fiero, who was the general of transportation for the Constitutionalists—he was Clerk in the Quartel. We weighed out and checked the hides—I think it took some two days—and then Captain Moise and Major Alvarez went over to the Finnegan-Brown Company's office in El Paso and we checked up and compared notes. I think there was thirty-eight or forty difference between us, and we split, and I went over to see General Villa and asked him how he wanted pay for it and he said, "I would like to have it in United States gold coin," that he wished coin, and the next morning Major Alvarez and myself and an employee of ours, Mr. Alonzo Taylor, went to the State National Bank in El Paso and drew out the gold and put it in my
255 automobile and we went across the river and turned it over to, I think, the secretary or the treasurer in the presence of General Villa—it was taken in there and thrown on the bed in the—where they were all present.

Q. General Villa did not take the money himself, did he?

A. No, sir; he didn't touch it.

Q. Well, then what?

A. Then General Villa spoke to Mr. Taylor and says, "Mr. Taylor, I want to give you people a bill of sale for these goods." He says, "You are familiar with legal papers in Mexico and I wish you would write up a bill of sale and bring it over late in the afternoon or tonight and I will sign it." We went across the river to the office and Mr. Taylor dictated the bill of lading; it was written on the typewriter——

Q. You mean bill of sale?

A. Or bill of sale. It was dictated and written on the typewriter there in the office—dictated by Mr. Taylor—and we went back that night, Mr. Taylor and myself, to get it signed, and some officer stopped us at the entrance and says, "They are holding a council of war in there; there is no one admitted," and I told him it was by appointment, and he says, "The orders are positive you cannot enter." We stayed there until eleven o'clock and then went back. We went over next morning and General Villa had gone to the battle of Ojinaga. He left in the night. That noon—about noon that day I met Major Paiblo Alvarez in front of the Quartel General in Juarez; he says, "I have instructions from General Villa to give you a bill of sale for those hides." I says, "I have it in my pocket." I held out a pocket memorandum book while Major Alvarez wrote those signatures on there with a fountain pen, and he took it into the Quartel General—I stood in the doorway of the Quartel—to get the seal put on. He came out and he says, "They are too busy; let's go eat." We went to the Black Cat and ate lunch, and
256 after lunch we went back, and I went with him to the Quartel General and the seal was put on.

Q. Now, Mr. Brown, is that the document that you have just referred to in your testimony?

A. Yes, sir.

Q. That is the original document?
A. Yes, sir.

Mr. Platt: I offer it in evidence. It has already been marked for identification. Let it be marked D-4.
Mr. Enright: Same objection as to materiality and relevancy.
Mr. Platt: Now, Mr. Enright, will you accept this translation?
Mr. Houston: No objection.
Mr. Platt: I offer the translation.

Translation marked Exhibit D-4-A.

Q. Mr. Brown, in the transfer of these hides who did the actual labor?
A. Soldiers.
Q. Soldiers sent there by the Constitutionalists?
A. Yes.
Q. Were you there during all of the time of the superintending of the transfer?
257 A. I was there, except possibly for half an hour—I would go away on some other business and then return.
Q. Did you take the numbers of the cars—the Mexican cars from which you took these goods?
A. I or some of the employes.
Q. Have you those numbers now?
A. I think there is a memorandum somewhere of those numbers that I brought here to New York.
Q. Can you tell what the numbers of the cars were (handing witness a paper)?
A. Yes, sir. This is quite a string of cars.
Q. You need not bother to give them except these eight cars. Give the eight cars to which you refer.
A. The eight cars——
Q. Can you limit them down to the——

Mr. Enright: Let him give the eight.

Q. Give the eight, if you like?
A. N. de M.
Q. Northern of Mexico?
A. National de Mexico, 25415; I. de M., 16059; N. de M., 12728; C. M., 17660; N. de M., 8023; C. M., 17496; N. de M., 8747; N. de M., 10693.

Adjourned till Thursday, October 22, 1914, 10 A. M.

FRANK W. BROWN, resumed.

Further direct examination.

By Mr. Platt:

Q. The last thing last night you gave the numbers of the eight cars which were sold to you and delivered at Juarez; is that right?

A. Yes.
Q. Now you stated that there were ten cars came on that train, I think, didn't you?
A. Yes.
Q. Ten cars of hides?
A. Yes, sir.
Q. What were those other two cars?
258 A. They were our property out of Chihuahua warehouse.
Q. Out of your Chihuahua warehouse?
A. Yes.
Q. Now were there other cars of hides that had come up from the south also at that time?
A. There was ten more making twenty in all.
Q. Eleven more, weren't there?
A. No; there was only twenty cars.
Q. Only twenty cars altogether?
A. Yes.
Q. What were those other ten?
A. Eight of them were our property out of Parall, Santa Rosalia and Chihuahua warehouse of Finnigan-Brown Company; one car was unknown, who it belonged to—it had been taken from the Huertistas by the Constitutionalists, and some of our employees identified it as a car of hides which belonged to an old man, an American, by the name of Gray, who lived in the town west of Parral.
Q. That is in the State of Chihuahua?
A. Yes, sir.
Q. How do you spell that?
A. P-a-r-r-a-l; and stated to General Villa that we identified this car as goods belonging to Mr. Gray and shipped by Mr. Gray. General Villa says——

Mr. Enright: I object to that as immaterial.

A. All right.
Q. Now these hides that you bought, as you have described,
259 and covered by the bill of sale that has been put in evidence, did you know anything about whose hides they were or where they had come from at the time you bought them?
A. I did not.
Q. Was any information given to you on that subject?
A. None at all.
Q. When did you first learn that these hides were claimed by Martinez & Company?
A. When Martinez claimed them here in New York or Jersey City.
Q. You mean in this action?
A. Yes, sir.
Q. Before the events in this case, did you know Mr. Martinez?
A. Yes, sir; I have known him for twelve or thirteen years.
Q. And have done business with him as a dealer in hides?

A. Many thousands of dollars when I was—not the Finnigan-Brown Company, they never had dealings with him, but I went there with John Finnigan Company and had dealings with him to the extent of many thousands of dollars.

Q. Covering a period of how many years?

A. I should say four or five years.

Q. Did you state in your narration of the circumstances yesterday about putting these goods through the Custom House?

A. I think not.

Q. Now please tell what occurred in regard to that and when? I refer you not to the American Customs House in El Paso, but the Customs House across the river? Well, let it go on from where you were yesterday and tell about putting it through the Customs House and the shipping of the goods to New York?

A. After the cars were loaded and transferred we consolidated the twenty cars into seventeen big American cars, and Major Alvarez issued, on orders signed "General Villa, per Major Alvarez, Chief of Staff," to the Collector of Customs, to pass those through his
260 Customs House without examination or molestation. I and an employee of Finnigan-Brown Company, Mr. Taylor, delivered that order to the Collector of Customs at Juarez in person, and we received an order to the agent of the Mexican North Railway to pass those goods into the United States.

Q. Well, were they passed then into the United States?

A. They were, yes.

Q. But what became of them then?

A. They were bonded through from Juarez to London.

Q. What do you mean by that?

A. They were shipped in bond, from Juarez, Mexico, to London, England, seventeen cars.

Q. You mean you gave a bond, the ordinary bond at the American Customs House, for a through shipment?

A. Yes, to London, England.

Q. By way of Galveston?

A. Yes.

Q. Well, do you know further what actually became of the cars with these goods in them?

A. I accompanied them as far as Galveston, saw them loaded on the ship and the seal put—the Government seal put on the hold.

Q. In what ship?

A. Into the El Oriente, I think.

Q. Bound for New York?

A. Bound for New York.

Q. Can you give the dates when the goods left El Paso and when they left Galveston?

A. They were billed out of Juarez on the 7th.

Q. Of January, 1914?

A. Yes, sir; transferred to El Paso on the 8th, the next day, and left that night about sundown, and reached Galveston on the night of the 9th, and were loaded on the steamship, which left there I

think Tuesday afternoon late, and arrived here the next following Monday in New York.

261 Q. They arrived what?

A. Arrived the following Monday in New York—the steamer arrived.

Q. Can you give the date of that? Perhaps if I hand you a calendar for 1914, you can fix the date of their arrival in New York. (Hands paper to witness.)

A. If I remember right the steamer arrived here on the 19th of October—or the 19th of January, 1914.

Mr. Platt: Is that correct?

Mr. Ewell: Yes, that is correct.

Q. Can you also, for the purposes of the record, fix the date when they—the steamer left Galveston?

A. It left on Tuesday——

Q. Take the calendar and look?

A. Tuesday, the 13th. The afternoon of Tuesday, the 13th.

Q. You say you consigned these goods to London—to Finnigan-Brown Company, London?

A. Finnigan-Brown Company, London, England.

Q. A bill of lading was issued in accordance with that consignment?

A. Seventeen bills of lading.

Q. Seventeen separate bills of lading, one for each car?

A. Yes, sir.

Q. Now when you obtained these bills of lading did you take out a Consular Invoice?

A. Yes. The American Consul at Juarez, Consul Edwards.

Q. You mean that is the United States Consul at Juarez?

A. Yes.

Q. You got the Consular Invoice from him?

A. Yes.

Q. Now when the goods came to New York were they shipped on to London in accordance with the consignment?

A. No, sir; I withdrew them for consumption at the Customs House.

Q. You went to the Customs House in New York and withdrew them for consumption?

A. Yes, sir.

262 Q. And sur-endered the bills of lading?

A. Yes, sir.

Q. And I suppose you must have got them and sold them to the Central Leather Company, gave the Central Leather Company an order on the Morgan Line for the goods?

A. I gave the Central Leather Company an order on the Morgan Line Steamship Company for the goods.

Q. When you were in New York did you see any of these hides that were so shipped?

A. I saw the wet salt hides in Jersey City.

Q. The wet salt hides that are in this case?
A. Yes.
Q. You did not see the dry hides?
A. No, sir.
Q. Did not examine them?
A. None of them.
Q. Now I forget, have you stated that you did sell these hides to the Central Leather Company?
A. I did, yes, sir.
Q. That is the fact, isn't it?
A. Yes, that is the fact.
Q. And was that by a special sale or under a general contract?
A. We had a contract for many thousands of hides for future delivery with the Central Leather Company. I turned them in on that contract—on those contracts—a number of contracts.
Q. You say "we had," who do you mean?
A. Finnigan-Brown Company.
Q. Had the contract?
A. Yes.
Q. What was the relation of the John Finnigan Company to his transactions? Will you explain that?
A. Our contracts were not made direct with the Central Leather Company; they were all made through the John Finnigan Company, who acted for the Finnigan-Brown Company. We had no direct contract from the Central Leather Company.
Q. You mean the John Finnigan Company acted as the
263 agent of the Finnigan-Brown Company?
A. Yes, in the sale of those hides.
Q. And this contract that you have spoken of, while actually the contract of the Finnigan-Brown Company, was made in terms with the John Finnigan Company?
A. It was made a contract with the John Finnigan Company for the delivery of hides from Finnigan-Brown Company.
Q. What was the John Finnigan Company? What is it?
A. The John Finnigan Company is a Texas Corporation, with headquarters at Houston, Texas.
Q. Now, when you had the hides for delivery under these contracts, what was your procedure in business that was followed in this case?
A. To deliver them wherever we were instruced to deliver them.
Q. You gave your notice to the John Finnigan Company when you had hides?
A. Yes, we telegraphed them or wrote them we had certain stuff in sight, which we would like to sell.
Q. And that you offered to the Central Leather Company under your contract; is that right?
A. Yes, sir—well, after the contract was made, why, we would ship it——
Q. Just ship it?
A. —wherever we had orders to.

Q. And did the Central Leather Company pay your company for the hides?

A. That is a matter of record that the secretary and the treasurer take care of, and I think we have credits from them.

Mr. Enright: I object.

Q. They were given credit on account?

A. Yes.

Mr. Enright: I object. I ask that the last part of the answer be stricken out. He says, "I think we had credit for them," and then says he doesn't know what he is talking about.

264 The Court: Of course if he is an officer of the company and has reason to say so it is all right.

Mr. Platt: All right; I will prove it otherwise.

Q. Did you have a running account with the Central Leather Company?

A. We did—through the John Finnigan Company.

Q. Yes. Now, Mr. Brown, have you at any time since we will say, October, 1913, made any trips into Mexico?

A. Yes.

Q. Besides the trips you have made over the river to Juarez?

A. Yes, sir.

Q. First let me ask you again about the conditions of things between El Paso and Juarez? Is there a railroad bridge there?

A. Yes, sir.

Q. And have trains been running over that bridge?

A. Constantly.

Q. Between the United States and Juarez?

A. Yes, sir.

Q. Do you know whether trains run regularly out of Juarez to the south?

A. They have been for some time been running trains regularly between El Paso and the State of Mexico—daily trains.

Q. Daily trains?

A. Yes, sir.

Q. Is that only since the capture of the City of Mexico by the Constitutionalists?

A. Yes, sir—they ran several south as they occupied the territory, then ran those trains, and after the capture they ran them into the City of Mexico.

Mr. Enright: I object to this line of testimony, subject to the general objection.

The Court: Yes.

Q. Do you know how soon after the capture of Juarez they began to run trains down, say, as far as Chihuahua?

A. They ran trains into Chihuahua the second day after the capture of Chihuahua, and the capture of Chihuahua was

265 possibly two weeks or three weeks after the capture of Juarez.

Q. You mean by that they ran regular trains?

A. They ran them to Torreon as soon as Chihuahua was captured.

Q. As soon as Chihuahua was captured they ran trains south as far as Torreon?

A. Yes, sir.

Q. Then after Torreon was surrendered by the Constitutionalists to the Federalists in December, did they stop?

A. Well, this was after the capture of Torreon.

Q. Oh, after the second capture of Torreon?

A. Yes, sir.

Q. Then they began to run the trains to Torreon?

A. Yes, sir.

Q. Did they afterwards begin to run trains further south than Torreon before they ran them into the City of Mexico?

A. Only as far as Zacatecas. They ran as far as Zacatecas on the Aguascalientes—they ran as far as Aguascalientes, and on down—the trains followed the army.

Q. You mean the passenger trains followed?

A. Yes.

Q. You mean the passenger trains ran on schedules?

A. Yes.

Q. What was the date of the second capture of Torreon about?

A. On or about April 10, 1914.

Q. You spoke about the belt line of street cars running between El Paso and Juarez. How soon after the finish of the Battle of Juarez did they begin to run regular street cars on that line?

A. Sometime in the afternoon, I think. The battle closed in the morning and some time in the afternoon they renewed the street car service.

Q. Of the same day?

A. Yes.

Q. Is there a bridge between Juarez and El Paso for the passage of foot passengers and ordinary vehicles, carriages and auto-
266 mobiles?

A. There are two of them.

Q. Are those bridges in free and general operation?

A. Except they are toll bridges.

Q. Toll bridges?

A. Yes; owned by a company.

Q. The people who paid the toll passed freely back and forth between the two cities?

A. Yes, back and forth as they wished.

Q. How long after the battle of Juarez was completed did the people begin to pass freely back and forth over those bridges?

A. I think late in the afternoon of the same day, except possibly they had special permits to pass, but they were open to the public, I think, late in the afternoon of the same day. I am not positive of that, but it was very soon after the battle.

Q. Now, besides these constant trips over into Juarez, what trips have you made over into the interior of Northern Mexico?

A. I made one trip from Matamoros to the mouth of the Rio Grande River.

Q. I don't think we all heard that?

A. I made one trip from Matamoros on the Texas border, at the mouth of the Rio Grande River to Monterey, Monterey to Victoria, Victoria to Tampico. Afterwards I made a trip to Chihuahua.

Q. Did you say that when you left Tampico you went up to Chihuahua?

A. No, sir; I had to go back to Houston.

Q. You went back over the same course?

A. No; I went back from Monterey to Laredo.

267 Mr. Enright: No part of that is in Coahuila.
Mr. Platt: No part of that is in Coahuila.

Q. Now, Mr. Brown, when did you make that trip?

A. About the middie of May.

Q. Of this year?

A. Yes, 1914.

Q. What cities or places did you stop in? Those that you have named?

A. I stopped in Matamoros and several small cities betwe-n there and Monterey, I just passed through.

Q. You mean just passed through them on the railroad?

A. Yes, some places we laid an hour or more.

Q. Let us take that up. Matamoros is a Mexican city, isn't it?

A. Yes, off of Brownsville, Texas.

Q. When you went through was all of this territory that you have mentioned as passing through in the possession of the Constitutionalists?

A. Entirely.

Q. It was after the capture of Tampico?

A. A few days afterwards.

Q. A few days after the capture of Tampico?

A. Yes, sir.

Q. Now what did you observe in Matamoros as to the state of public order?

A. The order was perfect there, the policemen on the street, cars running, stores all open, people passing back and forth over the ferry to Brownsville and over the bridge, and the schools
268 were running—I noticed one school, stopped there and looked in and spoke to the schoolmaster and passed some remark with him, don't remember what it was; saw children going back and forth to school.

Q. Had you any business there at this time?

A. Nothing only to take that train.

Q. Did not transact any business there?

A. No, sir.

Q. Did you go around the town generally

A. I stayed there over one day and walked over considerable of the town.

Q. Stayed in the hotel?

A. Yes.

Q. Hotel running as usual?

A. Yes, sir.
Q. What was the next town where you made a stay?
A. Monterey—I stayed one day in Monterey.
Q. Now between Matamoros and Monterey you passed on the railroad?
A. Yes, sir.
Q. Making stops at several places?
A. We stopped at all stations.
Q. Stopped at any places where you got off?
A. I got off very—some places we laid an hour or more, and I got off and walked around.
Q. Now in any of those places what did you observe as to a state of order or disorder?
A. Perfect order there.
Q. You walked about fre-ly?
A. Yes.
Q. Nobody interfered with you?
A. No one.
Q. No bandits there?
A. Lots of people saluted me.

Mr. Enright: You were friendly with Villa.

Q. You were a friend of Villa?
A. I was an American and they were all in love with the Americans?
Q. Did you know whether there was anybody there but friends of Villa's?
A I do not think there was, no, sir.
269 Q. Do you know whether there are any but friends of Villa's anywhere in the north of Mexico?
A. Not foot loose, no, sir.
Q. Now the people who are foot loose through the country there, are they partisans of Villa?
A. Well, that country was not under Villa's command; that was under the command of General Pablo Gonzales—the division of the northeast.
Q. Then what did you observe in Monterey?
A. Monterey, I got there I think of a Saturday and the next day was Sunday; I went uptown and took a bath at a public bathhouse and walked over the town considerably, walked around through there; I noticed two—three banks there that had a notice up that this bank is open and doing business, per order of the authorities, and was signed by Governor Antonio Areat, of the State of Neuvo Leon, Governor and General in charge.
Q. You say you were there on Sunday?
A. Yes.
Q. Churches going?
A. Yes.
Q. Stay in a hotel there?
A. I did, yes, sir.
Q. Did you discover any disorder at all in the town?

A. Nothing at all; no disorder of any kind except one instance where a Spaniard said something abusive to an American and he was promptly arrested, if that is disorder—a Spaniard met an American on the street and abused him, and he was arrested right quick and gone—that is the only disorder I saw of any kind, and that was merely, I suppose, a personal quarrel. I don't know. The police were there on the street.

Q. How large a place is Monterey?

A. Monterey is a place, I think, of about 85,000 people, possibly more than that.

Q. Eighty-five thousand?

A. Yes; it is a large city—possibly a hundred. I have heard it variously estimated.

Q. Active business town?

A. Yes.

270 Q. Railroad centre?

A. Yes. There are large yards and shops there, and it is a railroad—very important railroad town—railroad junction.

Q. Did you stop — Victoria?

A. We reached Victoria in the night and I went up town with some of the officers—an officer that I met on the train and was talking to, he took me up to some place at——

Q. You mean an officer of the railroad or an officer of the Constitutionalist army?

A. Constitutionalist army.

Q. He took you up to a restaurant?

A. Yes.

Q. You only stayed there—you walked through the town and back to the train; is that it?

A. That is all. Well, the town is some piece from the railroad, but it is scattered along between there and the railroad. The main town of Victoria is some piece from the railroad. I did not go up to the main town.

Q. Did not?

A. No, sir.

Q. Did you notice anywhere between Monterey and Victoria, and at Victoria, as far as you saw, anything about the state of order or disorder—public disorder?

A. There was perfect order. We stopped at many places an hour, I don't know on what business—I presume to load and unload provisions and stuff. We stopped there and we would go out and walk around, and the order seemed to be perfect; everybody seemed to be happy and pleased.

Q. From Victoria you went on down to Tampico, the port?

A. Yes, sir.

Q. That you say was just after the siege and capture of Tampico?

A. Very few days after.

Q. Did you pass right through the territory that had been the battle ground in going into Tampico?

A. Monterey had been taken shortly before that, but Vic-
271 toria had been in the hands of the Constitutionalists for quite a long time.

Q. What I mean to ask you is about going into Tampico. Did you go into the ground where the siege had taken place?

A. I did not in going in there, but the next day I went out to the battle ground, which was on the other side of Tampico from the way we went in.

Q. How large a place is Tampico?

A. I should say Tampico was about forty thousand people.

Q. Were the Constitutionalists in possession of Tampico at the time you were there?

A. They were.

Q. The army there?

A. Part of them were there.

Q. Some of them had gone on south, hadn't they?

A. They had gone to attack San Luis Potosi, they told me.

Q. What did you observe with reference to public order in Tampico?

A. The order—I got off at the train about 6.35 in the morning, and cargodores and market men were close around the station there and they all commenced laughing and saluting and saying the Americans were returning. I think there was two Americans on the train—two or three of us.

Q. Besides yourself?

A. Two besides myself; and we walked up the street to the hotel—I think some of these men carried baggage, porters—cargodores—we walked up to the hotel and registered, got breakfast, walked around town, and there was perfect order there. The street cleaning—the sweepers—paved streets—asphalt—they were sweeping and cleaning the streets and garbage wagons were picking up the garbage in cans in front of each residence; policemen on each corner; stores open; saloons were open, but they were only selling soft drinks, and order seemed—I went down to the Customs
272 House that day—the Customs House was open and transacting business. I was on the streets at night, went to the theatre.

Q. How long did you stay there?

A. I stayed there until some time in June. Early in June I left there.

Q. How many days?

A. Eleven or twelve days, I think.

Q. Did you during all that time go freely about the city?

A. Not a day—I was challenged at night, but when I said I was an American, they simply said, "Pass on, amigo"—"Pass on, my friend." They challenged me. That was their custom after ten o'clock at night, to challenge anybody on the street.

Q. Make him account for himself?

A. Yes, sir.

Q. Did you observe whether the schools were going?

A. I did.

Q. What?

A. I did, yes, sir. I was constantly on the street. I was back and forth to the Quartel General.

Q. Were you there doing business for the Finnigan-Brown Company?
A. Yes, sir.
Q. Were you buying hides there?
A. I did not buy any.
Q. Did not buy any?
A. No, sir.
Q. Did you have business to transact with business people there? Did you meet business people generally?
A. I did.
Q. No interference of any kind and you heard of none?
A. None at all; except some stores that were closed there, per order of the government, Constitutional Government. They were closed with a guard over them.
Q. Close what?
A. Closed with a guard stationed in front of them.
Q. But no disorder?
A. None at all.
Q. Did you see the United States Naval officers there?
A. I did.
273 Q. United States marines and sailors?
A. I was with the United States marines a good part of one Sunday, ashore, at La Para, seven miles below Tampico, at the mouth of the river, at a beach resort, with the United States Jackies; they were there on shore leave. I was down there and mixing with them.
Q. Everything peaceful there?
A. Everything peaceful.
Q. The Americans and the Mexicans mixed freely together?
A. The Constitutional troops and the American Jackies were hobnobbing with each other and talking pigeon English and pigeon Spanish,—trying to talk to each other.
Q. Did you see American officers about the City of Tampico?
A. Yes, sir; some Americans and English and German officers there from the vessels that were lying there in the stream.
Q. When you came back did you stop at any places, when you came back to Laredo?
A. I stopped in Laredo—no, I just went on through, I did not stop going back.
Q. While you were in Tampico did you see the Constitutionalist officers there?
A. I did, yes.
Q. Did you talk with them?
A. I saw General Louis Caviaro, the Commander-in-Chief.
Q. Is he of the Division of the East?
A. He was of the Gonzales Division—Division of the Northeast.
Q. Was he the officer in command of the city?
A. He was the officer in command of all the State of Tamaulapas at that time. He was the Military Governor and officer in command of the entire state.
Q. Did you get a document from him?

A. I did.
Q. What was it?
A. It was a first class pass.
274 Q. Have you got it there?
A. I have. (Witness produces paper.)
Q. Have you got a translation? Can you translate it? Can you read it in English?
A. I speak Spanish, but I do not read it very fluently, but I can translate it, I think.

Mr. Ewell: Mr. Houston says this gentleman can translate it.
Mr. Platt: I will offer this in evidence, and if Mr. Enright will consent I will have the gentleman translate it.
Mr. Enright: No objection to the translation. I object to the offer as immaterial and irrelevant.
The Court: That is aside from your general objection that you have already registered as to this?
Mr. Enright: Well, I suppose it is, yes. It seems to me the general objection is more particularly that the fact of the de facto sovereignty or belligerency is to be determined by the attitude of the State Department. This document it seems to me is a detached fact that has no relevancy.
Mr. Enright: There is the further objection apparent, of
275 course, that it concerns conditions in an entirely different state of the federation and at an entirely different time.
The Court: I will overrule the objection, because I think it will be covered fully, Mr. Enright, under the general objection that you have, and the whole thing will be passed on at that time.
Mr. Enright: Note an objection.

(Paper marked Exhibit D-10.)

Mr. Platt: Just read the translation on the record out loud.
The Interpreter: "On order of the Governor and Military Chief of the State, General Louis Caviero, it is recommended to all the chiefs, officials, officers and Constitutionalist troops, to whom these presents shall come, to give all classes of guarantees to the American citizen, F. W. Brown, in his person as well as in his business. Constitution. Reform. Tampico, June 2nd, 1914. The Chief of the Constitutionalists, Jose Guerro."

Q. In your trip to Mexico did you use the post office?
A. Yes, sir.
Q. Frequently?
A. I used it several times at Tampico, mailed letters there.
Q. Letters to the United States?
A. Yes, sir.
Q. What stamps did you use? Did you use Constitution-
276 alist stamps or Federal stamps?
A. I did not. May I make an explanation of it, why I didn't use them?
Q. Yes.

A. They told me that they did not have them, they were out, and that they would guarantee the letter would go if I would give them ten cents.

By the Court:

Q. Did not use any stamps at all?
A. They had no stamps.
Q. You gave them ten cents?
A. I gave ten cents to the postman and he guaranteed the letter would be forwarded to its destination, and it was.

By Mr. Platt:

Q. Did you use the telephone and the telegraph?
A. I did. I sent wires from there to El Paso and they reached El Paso.
Q. Did you use Constitutionalist money in connection with your business in Tampico?
A. I used Constitutionalist money where I could get it, otherwise I used United States gold coins.
Q. That passed everywhere?
A. They pass. They were shy of money.
Q. I hand you two documents and ask you what they are?
A. One is a one pesos bill of Mexican dollar bill, and the other is a fifty cent bill in Constitutional money of the State of Chihuahua, or known as Villa money.
Q. Are those samples of the kind of money that was issued by the Constitutionalists and that you used in Mexico?
A. Yes.

Mr. Platt: I offer these in evidence.

(Papers marked Exhibits D-11 and D-12 respectively.)

Q. I notice on these the dates of issue, in December, 1913. Did you use this kind of money as far back as that time?
277 A. Yes, sir. There were several issues of it, and we used it indiscriminately. Their issue was good.

Mr. Enright: That is, one was as good as another.
Mr. Platt: Well, that is your comment.

Q. Were they good? Did they pass current?
A. They paid railroad fare, they paid railroad freight, they were good at hotels; we bought meals and paid all bills.
Q. Use them in the stores for the purchase of anything that you had to purchase?
A. Yes, merchandise.
Q. Did you make any other trip into Mexico?
A. I made a trip to Chihuahua in July—early in July.
Q. Of this year?
A. 1914, yes, sir.
Q. How long were you in Chihuahua?

A. About seven or eight days.
Q. Went down over the railroad?
A. I went on a passenger train.
Q. And came back on a passenger train?
A. Yes, sir.
Q. Didn't you make an automobile trip into Mexico?
A. Mr. Fields did. I did not.
Q. You did not?
A. No.
Q. Now on your way down to Chihuahua and in Chihuahua and on your way back what was the state of public disorder?
A. No disorder of any kind. Order was perfect.
Q. In the State of Chihuahua was the order good?
A. I passed on the streets night and day and was not even challenged.
Q. The public conveyances running?
A. The street cars were running, and coaches, and business going on as normal there, except some few stores that had been closed up.
278 Q. Post office and telegraph and telephone under the control of the Constitutionalist Government?
A. Yes. The post office was doing—seemed to be doing a good business. I was in there several times in fact. Finnigan-Brown Company had a box there and I was going there with some of the employees to get the mail.
Q. As to the telegraph and telephone, did you use them?
A. I used it a number of times.
Q. Being operated by the Government?
A. Yes.
Q. Schools going?
A. Yes, they were.
Q. Churches?
A. I could not say about churches. In fact I don't know. I presume they were. I don't know whether they were or not, because I didn't notice.
Q. You did not attend church?
A. No, sir.
Q. I suppose you are a Protestant and they were Catholic churches, was the reason, of course. Are those samples of the stamps issued by the Constitutionalist Government?

Mr. Enright: I object.

A. This is a Constitutional Government stamp.

Mr. Enright: I object, unless it is something within his own knowledge.

Q. Is that the kind of stamp that you used down there?
A. On mail in the Constitutional territory that is the only stamp that carries it. (Indicating.) Except United States stamps, where it is mailed in the United States. Those carry letters to any part of

the Constitutional territory—United States stamp when it is mailed in the United States.

279 Cross-examination.

By Mr. Enright:

Q. Mr. Brown, you have stated that you were the vice president of the Finnigan-Brown Company. You are also the general manager, are you not?

A. Yes, sir.

Q. You are the owner of one-third of the stock, are you not?

A. I am.

Q. The other two-thirds of the stock is owned by the John Finnigan Company, isn't it?

A. Not to my knowledge. The other two-thirds are owned, one-third by E. W. Grundler, and one-third R. E. Paine.

Q. Their stockholdings are in reality owned by the Central Leather Company, or don't you know that?

A. Not to my knowledge.

Q. Never heard of that?

A. I heard it rumored, but I have no knowledge of it.

Q. Now you or your company have purchased a great many hides from the Constitutionalists, haven't you?

A. I presume we purchased over half a million dollars' worth from them.

280 Q. And that included green salted hides, didn't it?

A. Wet salted, or green salted, is the same, as you call it.

Q. And also hides that were not salted at all, that were taken by you fresh from the slaughter houses under your contract?

A. Yes, sir.

Q. Also included a great many dry hides?

A. Yes.

Q. Dry hides were confiscated hides, weren't they?

A. I don't know.

Q. Never heard of that, eh?

A. I don't know. They never would tell me what they were, except that it was the property of the constitutional government of Mexico.

Q. Did you ask?

A. They offered them for sale.

Q. Did you ask?

A. I did.

Q. Asked whom the hides belonged to, didn't you?

A. Some cases where they came from.

Q. They would not tell you whom they belonged to?

A. Told me they would not tell.

Q. Did you ask your friend General Villa when you were buying dry hides, for instance, who they belonged to?

A. I never did ask him.

Q. Between you and General Villa, why, there were no questions asked?

A. With General Villa there was very little business done—with General Villa personally. It was done through other officers or through their hacienda financieri.

Q. Had you been buying hides from the so-called Constitutionalists before December 1st, 1913?

A. I could not say as to that. Some of the employees might have been buying them at some of the Mexican houses, but I would not know it. The only thing they bought so many hides and accounted for so much money that they spent for them.

Q. You are not prepared to say, Mr. Brown, are you, that your purchases from the Constitutionalists have not been considerably more than a half a million dollars?

A. I would not say.

281 Q. Been at least that?

A. In a rough way. I don't know how much it is, but I should think it was some where over a half million dollars.

Q. More than a half million?

A. I should think so.

Q. Now when was it that overtures were first made to you about the purchase of these Martinez hides?

A. These hides in controversy?

Q. Yes?

A. The latter part of December, on these particular hides.

Q. What's that?

A. On these particular hides the latter part of December. There had been some negotiations regarding the purchase of hides generally from the Constitutional government, but these——

Q. Before that time?

A. Yes.

Q. Were those negotiations carried on by you?

A. Partly by me and partly by employees of the Finnigan-Brown Company.

Q. Did those negotiations concern dry hides?

A. Any hides in general. We had at that time a contract for green hides with the Constitutionalist Government.

Q. But aside from that you had negotiations for dry hides, didn't you?

A. Yes, sir. We had—I don't know whether we had actually purchased anything or not at that time, because the employees did not state to me who they made the purchases from—the agents of the various branch houses.

Q. Your company had a considerable quantity of its own hides down there in December, didn't you?

A. We did.

Q. And in this general confusion you lost those, didn't you, for a time?

A. No, sir. The Constitutionalists took care of all business there—anything that was for us was taken for us.

Q. They took care of your business——

A. Any cars.

282 Q. —by taking your hides?

A. Any cars of our goods that were found on the railroad, why they were taken care of and guards were taking care of them, and they were taken care of until they could be moved out.

Q. That is another way of taking possession of the hides, isn't it?

A. No, sir, they took no possession of them. They put guards over them to see they didn't get off—were not moved—did not go to the wrong place.

Q. I thought you said just a little while ago the Constitutionalists took charge of your business down in Mexico.

—. ——.

Q. What is that? Didn't you say a moment ago that the Constitutionalists took charge of your business?

A. They took no charge of our business, except where we had goods—where the railroads were captured from the Huertistas and cars were found there which were supposed to be ours or which they knew were ours, they took care of those cars until they could ship them out,—bring them out.

Q. Now when these two Mexicans came over to see you the latter part of December,—who did you say they were?

A. One was Major Pedro Alvarez, and one was Capt. Moyes.

Q. Who did the talking for them?

A. They did their own talking.

Q. Which one of the two?

A. Major Alvarez talking and Captain Moyes did the talking. Major Alvarez spoke no English; Captain Moyes spoke perfect English.

Q. Just what did they say to you?

A. They said what was the price—what would I pay.

Q. Just what did Alvarez say?

A. Alvarez asked me what price I would pay for hides in Mexico.

Q. What part of Mexico?

A. He did not say at the start—in fact he never said. I

283 told him that——

Q. Wait. Before what you told him, what did the other Mexican say, if anything?

A. They simply wanted to get a price out of me for hides in Mexico without telling whose they were. That was the gist of their conversation.

Q. Did you ask them what part of Mexico these hides were in?

A. I told them I would not do any businesss.

Q. Oh, no; did you ask them from what part of Mexico these hides were?

A. I couldn't tell whether I did or not. I cannot remember the exact conversation. I can only remember the gist of it.

Q. Did they say whether the hides were dry hides or green salted hides?

A. Well, the only way I can answer that is to state what I did or what I told them.

Q. No; I am asking what they said to you first, and then I am coming to what you said to them.

A. I cannot remember that conversation. The conversation was very short.

Q. And as far as you recall it now they simply asked for the price of hides?

A. They tried to get a price out of me.

Q. For hides generally?

A. Yes.

Q. Now there is a different price for dry hides than there is for green salted hides, isn't there?

A. Yes.

Q. So they did not tell you whether it was green — salted that they wanted a price on?

A. If you will allow me to state what I did, why, I simply choked the conversation off and refused to talk to them unless they would go with me to the Mexican side of the river, the Quartel General, and do their talking in the Quartel. Refused to give them any price or talk to them at all.

284 Q. As a matter of fact didn't you tell him before you would talk business with them you wanted to see whether any of the hides they were talking about were not your own hides?

A. No, sir; I told them that they could not talk business with me on stuff in Mexico, without the premises of the Quartel General; that I would not treat with them or make prices with them, because there was war going on there, and I would not do it.

Q. Did you say anything to them about your own hides in Mexico that you had not been able to get possession of at that time?

A. I—in fact, had no conversation with them except to choke them off and tell them that they had to do their talking at the Quartel General in Juarez. I might have had a few words with them, but that was the gist of the conversation. I cannot remember what it really was.

Q. I want you to try to remember as nearly as you can whether in this first conversation you did not press them for a little information about your own hides?

A. I did not.

Q. You did not tell either of them that before you would enter into negotiations for the purchase of these hides that they were talking about, you wanted to see the hides and be sure they were not your own hides? You did not tell them?

A. I might have, possibly.

Q. Either of them?

A. I might have, possibly told——

285 Q. You did not tell them or either or them what I have just stated, or anything like that? Are you willing to say that?

A. I would not say I did or did not. I cannot remember the conversation, because it was—those things were coming up every day, constantly. It was a matter of general business, I cannot remember the conversation.

Q. Now, Mr. Brown, do you remember along about the last of March, Mr. Ewell, one of the attorneys for the Central Leather Company, was down there in El Paso and inquiring about the fact of this purchase. You remember that, don't you?

A. Yes, I do remember it.

Q. You remember having a conversation with him and telling him the occurrence as you then remembered it?

A. I remember—many conversations with him.

Q. Did you tell Mr. Ewell that when these two gentlemen came over to your office there in El Paso to start this negotiation for the hides that you said you first wanted to go over to Juarez, and look over the hides to see whether they included any of your hides or not?

A. I might have possibly told him. If I did tell Mr. Ewell I don't remember whether or not. I might have possibly told him. That might have been possible in the conversation, but as I say, we were very busy at that time and I cannot remember those conversations.

Q. Now, refreshing your memory by reference to that event, I ask you whether it is not true that at the time Mexicans came to your office you were uncertain what had become of a number of the hides belonging to your company in Mexico?

A. That is true.

Q. That is true?

A. Yes, sir.

Q. You did not know whether they had been confiscated or what had happened to them, did you?

286 A. We had cars that we did not know their location.

Q. And when these two Mexicans came over to you and started this negotiation the thing that was in your mind first was a doubt as to whether they were not trying to sell to you your own hides over again; that is true, isn't it?

A. That is possible, yes, sir.

Q. And you knew very well that they did not have any right to sell to you over again your own hides, did you?

A. They did not.

Q. You knew they had no right to?

A. They had no right to sell my property to me.

Q. Now, Mr. Brown, didn't you know, when these Mexicans came over there in your office and tried to sell you hides, that they were talking about confiscated hides?

A. I took them for spies.

Q. Spies, indeed. Why should they be spying on you?

A. I don't know. That was my impression, that they were spies, and the conversation with them was very limited.

Q. What had you been doing to be spied on?

A. I don't know.

Q. What was your part in this revolution?

A. Nothing, only to try and do business in Mexico under these discouraging conditions.

Q. Why should you have been the subject of espionage?

A. I don't know of any reason.

Q. Why did you think you were?

A. I did not think—I thought they were spies. I thought they were fishing for information.

Q. You had some doubts they were really trying to negotiate for hides at all?

A. I did.

Q. And if they were trying to negotiate for hides, your idea was they probably would include some of your own hides, and you did not want to buy them over again?

287 A. I do not remember what my ideas were at that time. I cannot remember those things.

Q. Are you prepared to say, Mr. Brown, that you did not know in this talk that you were having with these two Mexicans, that the thing that you were both talking about was confiscated hides?

A. I positively refused to talk business with them unless they went over to the Quartel General and did their talking.

Q. Did you go over with them to the Quartel General?

A. I went to General Villa's headquarters and saw him personally—we all went together.

Q. Did you look at the hides?

A. No, sir, not at that time.

Q. Made two trips to Villa's Headquarters, did you?

A. I did.

Q. What happened the first time, the first trip?

A. We saw General Villa and there was a general conversation about buying these hides, and there was dissatisfaction about the price.

Q. What?

A. Dissatisfaction with the price I offered them.

Q. What was the price that you offered them?

A. One dollar per kilo.

Q. And the kilo is the measure of weight, isn't it?

A. Yes.

Q. Corresponding to how many American pounds?

A. Roughly 2.2 pounds—it was in fact two and a fraction—or 2.046.

Q. Was this price a dollar per kilo for dry hides or green salted?

A. Dry hides.

Q. That is all you were talking about first, wasn't it?

A. I didn't know the contents of these cars at that time.

Q. Was this dollar per kilo Mexican?

A. Mexican money, yes, sir.

Q. What was that worth in American gold, about, at the

288 time?

A. At that time—I would have to stop and think.

Q. That is December, 1913?

A. Somewhere between thirty-five and forty cents, but I could not state exactly at that day—it was fluctuating at that time.

Q. Was it worth as much as that?

A. I think just at that day it was.

Q. One of the other witnesses said three to one?

A. Certain classes of Mexican money were much cheaper, in fact, the state bank money was much cheaper. The Bank of Monera was cheaper, but the Constitutionalists would not accept that.

Q. Well, on the first trip to Villa's Headquarters, the only price you talked about was one dollar per kilo, and that is the price for dry hides; is that right?

A. Yes, sir.

Q. Did Villa say where these hides were?

A. He did not.

Q. You did not ask him?

A. I did not.

Q. You did not ask him whose hides they were?

A. I did not.

Q. How did Villa say he had come to have these hides?

A. He said they were the property of the Constitutional Government.

Q. That is all he said?

A. That is all he said.

Q. Say anything about their being confiscated hides?

A. He did not, to me.

Q. Now, as a matter of fact you were perfectly familiar with conditions down there, weren't you?

A. I was, quite familiar.

Q. You did not have any idea that the Constitutionalists could be in possession of dry hides in any other way than through confiscation, did you?

A. I might have suspected that they were confiscated goods. I did not ask.

Q. Well, did you suspect that they were confiscated goods?

A. I did.

289 Q. And the first meeting that Villa brought up in that way you offered this price and he refused to take it, is that right?

A. He stated that he was very busy and would I be there at exactly three o'clock that afternoon. I was there. He was there.

Q. Up to that time you had no intimation that these hides were in Juarez?

A. No which?

Q. No intimation?

A. He told me that he brought the hides with him on a train load of bullion.

Q. A train load of bullion?

A. Yes; there was a train load of buillion, and the train consisted of this bullion and the hides.

Q. The bullion was also the property of the Constitutionalists?

A. The bullion was the property of a mining company, in charge of one of their managers.

Q. Did you in this first talk say anything to Villa about your own hides?

A. He stated to me that he had brought ten cars on the train and

two cars of them were ours, and we would have difficulty in picking out our own two cars.

Q. Well, now, you did go back at three o'clock in the afternoon?

A. I did.

Q. In the meantime did you examine any of these cars?

A. I did not.

Q. Did any of your men examine them?

A. No one examined them. I immediately left Pablo Gonzales, Captain Moyes and myself in my automobile, and went to the American side.

Q. And came back at three o'clock?

A. I came back at three o'clock. I don't know when they went back, the chauffeur took them back.

Q. What happened when you came back to Villa at three o'clock?

A. We stood there in the house, in the headquarters, and then I moved out in the garden. It was a warm, pleasant day.

290 Q. I am not so much interested in the climate as I am in what was said?

A. I cannot remember the exact conversation. I can tell what occurred finally.

Q. Well, did you raise your price?

A. I did.

Q. What did you finally offer?

A. I finally offered one dollar and twenty-five cents per kilo.

Q. Mexican?

A. Mexican.

Q. Did he accept that?

A. He did.

Q. Dry hides?

A. Dry hides.

Q. Did you have any bargain about the green hides?

A. No one knew that there was any green salted in those cars at that time.

Q. So the green salted price was fixed later?

A. It was.

Q. Was anything said about the price of goat skins?

A. Nothing at all said.

Q. Or calf skins?

A. Nothing said.

Q. Or horse hair?

A. Nothing said.

Q. Nothing said about their being included?

A. No, sir.

Q. As a matter of fact there were some bundles of horse hair you found in these cars, were there?

A. There were.

Q. And they are included in your bill of sale?

A. They are.

Q. Well, now, when Villa stated he would close at one dollar and twenty-five per kilo, did that break up the conference as far as Villa was concerned?

A. He said, "Major Alvarez will attend to the balance," except that Mr. Taylor was with me and he had some conversation with Mr. Taylor, which I did not hear. I think he and Taylor were personal friends. I do not think it was relevant to this business. I do not know what Taylor said to him.

Q. Alvarez was to attend to the details?

A. Yes.

291 Q. When you say attend to the balance you mean attend to the details?

A. Yes.

Q. Of the transfer?

A. Yes, sir.

Q. Then did you all go to look at the cars?

A. We did not go until the next morning.

Q. You went then?

A. I went in company with Major Alvarez and some soldiers.

Q. And you examined all of the cars, didn't you, that contained hides?

A. We opened them and transferred them, weighed them, counted them.

Q. Well, these cars that had the hides in controversy here—contained those hides, you found padlocked, didn't you?

A. I did, yes, sir.

Q. And the padlocks were rusted, indicating they had been on the cars for a long time, weren't they?

A. The indications were they had been on there for some time, yes.

Q. You are quite familiar with the general appearance of shipments of that kind, aren't you?

A. Yes.

Q. You judged from the appearance of those cars and the bugs you found in the cars and that sort of things that the bulk had not been broken for several months?

A. In my judgment those cars had not been disturbed for three or four months—the contents.

Q. They had that appearance?

A. They had that appearance, yes, sir.

Q. You stayed there off and on while the hides were being loaded on to the platform, counted, weighed and transferred to the American cars, didn't you?

A. I had a general supervision of it; I was there.

Q. What happened when you came to the car that had the green salted hides in it?

A. We arranged with Major Alvarez to put them in at stated price.

Q. At a stated price?

A. Yes.

292 Q. Who made the price on the green salted hides?

A. We took the green salted hides at the same relative value as the dry flints; we averaged the gross value of each hide and counted

the wet salt and put them in at the same price, the same relative value for the wet salt as for the dry.

Q. By relative value you mean you averaged up the weight which a green salted hide or a wet salted hide would represent if dry?

A. If the average of the dry hides amounted to a value of twelve dollars and fifty cents for each hide, we put in the wet hides at a price of twelve dollars and fifty cents for each hide.

Q. And the reason, in an accurate transaction of hides, the price per pound of a wet salted hide is less than a dry hide, is because the wet salted hide weighs so much more?

A. That is it. There you are.

Q. You also found in these cars of which you gave the numbers yesterday, some goat skins, didn't you?

A. Yes.

Q. One hundred and twenty-three bundles of goat skins?

A. I would not say, unless it is on that bill of sale. That bill of sale is the exact contents of the five cars.

Q. Well, it is on the bill of sale?

A. Of the eight cars, that is the exact contents of the eight cars.

Q. By reference to the memorandum you had here yesterday, will you just tell us what car number the goat skins came out of?

A. I don't know as I could tell that offhand, without going through some records.

Mr. Platt: I object to this testimony as irrelevant and not proper cross-examination. It cannot serve in any way to enlighten the Court and jury as to these other goods in these other cars, and it is just taking the time of the Court.

293–94 Mr. Enright: They have introduced in evidence in their direct case as part of the defense, a bill of sale, which covers 4,731 cattle hides, 600 calf skins, 123 bundles of go-t skins, 1,500 bundles of bristles.

Q. And the Mexican word which has been translated bristles really means hair, doesn't it?

A. Yes, it means hair.

Q. In that particular case it meant horse hair?

A. I don't remember whether it was horse hair, cows' hair,—it was hair.

Mr. Enright: The bill of sale also specifies a bulk price for the whole business, and on cross examination I think we have a right to go into the whole transaction, the subject mat-er of the transaction.

295 Mr. Platt: Your Honor referred to the hides in controversy.

296 By that I assume you mean the hides which were seized by the sheriff here in Jersey City.

Now what I wished was to make my admission with reference to those hides. I say and admit that those hides were hides which were put into those cars of those specific numbers, five cars.

The Court: May I read those numbers from my notes?

Mr. Platt: If you will.

The Court: Number NM8747, CM17496, NM12728, NM10693, CM17660.

Mr. Platt: Those are the five cars. Now I say that these hides here that I have described were the hides or of the hides that Mr. Martinez put in those cars at Torreon, and which went to San Pedro and were seized at San Pedro and were of the hides which Mr. Brown had transferred at Juarez from those five cars into American cars. Now that, I think, is just what I said in my opening. I would have
297 been glad at any time to have made the admission formally if Mr. Enright would have accepted it.

Mr. Enright: I asked you to make it when we were taking Martinez' testimony.

Mr. Platt: Martinez' testimony was taken at the very time of the seizure, and we did not know about it. We were seeking information ourselves about it.

298 By Mr. Enright:

Q. Now, Mr. Brown, I call your attention to this bill of sale. I see there are 123 bundles of goat skins. How many skins does that mean?

A. They were in irregular packages and I did not count them—small bundles and large bundles.

Q. Were they counted at any time?

A. They were counted at New York, I think, when they were sold. There was an account rendered for them.

Q. Were they counted at any time before you settled with General Villa?

A. They were only weighed.

Q. And the price of goat skins was fixed on the basis of weight?

A. It was.

Q. Do you remember the weight was in kilos, also?

A. Yes.

Q. What was the price?

A. Major Pedro Alvarez and I agreed to put them in at the same price as hides. We said,—"Weigh them out and let them go,"—which was a dollar and a quarter.

Q. As a matter of fact do goat skins command the same
299 price in the market as cattle hides?

A. Depends on the quality. Goat skins vary greatly in quality.

Q. Well, considering them of merchantable quality, how does the price per pound of goat skins compare in the open market with the price of——

A. They would be worth more.

Q. Than dry hides, you mean?

A. They are worth more than dry hides.

Q. How much more per pound than dry hides?

A. At the time of this transaction I should say they were worth three or four cents, or possibly five cents more per pound than dry hides,——

Q. Why do you say at the time of this transaction? Has there

been any very wide fluctuation in hides, the price of hides, the skins?

A. Both hides and goat skins.

Q. Wait—between the summer of 1913, say, and the middle of January or February, 1914?

A. I did not understand.

Q. I say has there been any considerable fluctuation in the price of hides and skins between, say, the summer of 1913, and the middle of January or February, 1914?

A. No, sir, not considerable in that time, no, sir.

Q. On what basis did you settle for the calf skins?

A. Weighed them up—same price per kilo.

Q. How does the price in the ordinary market of the United States compare between dry cattle hides and calf skins?

A. Just about a standoff at that time—just about the same thing.

Q. How did you figure out the price of the hair?

A. Weighed her up and let her go at the same price.

Q. The hair and the hide went together, eh?

A. Yes.

Q. In settled markets there is a variation in price between the two, isn't there?

300 A. The hide is worth less—the hide was worth much less than the hair.

Q. Have you a memorandum there from which you can give us the weights,—as you ascertained them there on the platform in Juarez—of these different items, cattle hides, calf skins, goat skins and hair?

A. I have not with me.

Q. And you figured it all up on the basis of a dollar and twenty-five cents per kilo Mexican, is that it?

A. Yes, sir.

Q. This bill of sale calls for $24,602.32 gold coin of the United States?

A. Yes, sir.

Q. How does that happen?

A. I went to see General Villa and talked it over with him, and figured on exchange and General Villa and the party who acted as treasurer, and myself all agreed on that amount of money in settlement for the whole business.

Q. He did not want this Mexican money, did he?

A. He did not want Bank of Manero bills.

Q. What's that?

A. He did not want Bank of Manero bills.

Q. He wanted American gold?

A. He said he would prefer the American gold.

Q. To Constitutionalist money?

A. And we settled on that basis.

Q. On what par of exchange did you agree?

A. I don't remember. There was a general conversation back and forth, and we figured—I figured and his treasurer figured, and

finally that was the settlement for the contents of the eight cars, the entire contents.

Q. The figuring was done on the third trip to Villa?

A. It was done after these cars were transferred.

Q. Right there on the platform?

A. No, no, no; we went back to Quartel General—at his private headquarters in front of the Quartel General.

301 Q. After you settled on the amount you went over to El Paso and got the gold and came back with it?

A. Yes; Major Pablo Alvarez, Mr. Taylor, Captain Moyes and myself with my automobile went to the bank and got the gold.

Q. Then I think you said the gold was dumped on the bed there in the headquarters; is that it?

A. It was—in sacks. It was sealed and had the bank seal, wax seal in the sacks. They guaranteed the contents. Thrown on the bed.

Q. Then you did not stay to see how they divided it up, of course.

Mr. Platt: I object. There is not any testimony in this case for him to base such an insinuation as that on, and I object.

The Court: It may be stricken out.

Q. You did not wait to see what they did with the gold, did you?

A. I saw that the man who was acting as treasurer took it. What he did with it I don't know.

Q. You say you saw it put on the bed?

A. It was thrown on the bed—laid on the bed. It was in General Villa's room. There was several parties present there. Mrs. Villa was present.

Q. Was it Mrs. Villa's bed?

A. I don't know whose bed it was.

Q. That the treasurer was doing——

A. It was the headquarters, the front room of the general headquarters—General Villa's private headquarters in the front room. It was a large parlor. There was a bed in one corner.

Q. El Paso is quite a headquarters, isn't it, for the hide business?

A. There is considerable hide business done there.

Q. There is a pretty well settled price for hides there, isn't there?

A. There is three concerns there buying three houses, including ourselves—two besides ourselves.

302 Q. As I take your figures, a dollar and twenty-five cents per kilo, and figuring a kilo roughly at 2.2 pounds, would make a price of 56 cents Mexican?

The Court: Per pound?

Q. Yes. On a basis of three for one that would be eighteen and two thirds cents American per pound?

A. More than that.

Mr. Platt: I object.

303 Q. What was the market price for dry hides per pound, El Paso at that time?

A. Twenty-six and a half to twenty-seven cents in El Paso, Texas, per pound.

By the Court:

Q. Per pound? That is the American standard pound,
304 and the price twenty-six and a half or twenty-seven, is in American currency?

A. Yes, sir.
Q. United States currency?
A. Yes, sir.

By Mr. Enright:

Q. Was there an export duty on hides from Mexico at that time?
A. Eight cents per kilo.

Mr. Platt: You mean export duty from Mexico into the United States?

Mr. Enright: Yes, that is what I mean.

A. Yes, an export duty from Mexico to the United States, eight cents per kilo, Mexican money.

Q. And you brought through at the same time these hides came through, not only the hides in controversy here, but you brought through seventeen carloads all told?

A. Yes, sir.
Q. Didn't you?
A. Yes, sir.

Q. You have already testified that after you paid this American gold to Villa you got your bill of sale and you got your passport from him directing all of this merchandise to be brought through?

A. Yes, sir.
Q. Without any other payment?
A. No other payment.

Q. So that this twenty-four thousand and odd dollars included not only what you were paying for these hides but it included the privilege of exporting seventeen carlods of stuff?

A. It did not.
Q. You said you did not make any other payment?
A. Not at that time.
Q. That is what I asked you?

A. We had made a payment prior to that time, a lump sum for these privileges.

Q. A lump sum?
A. Yes.
305 Q. How long before?
A. It must have been a month before.
Q. A month before?
A. Possibly. I should say possibly a month before that.

Q. A lump sum to insure you the privilege of bringing through all your hides without payment?

A. Transportation and exportation.

Q. Have you any way at this time of telling us the weights for the other merchandise included in this bill of sale?

A. I have not.

Q. Now you came with this shipment, didn't you—came right through to Galveston?

A. Yes.

Q. Then after it was loaded on the ship El Oriente, you took passage on the ship to New York?

A. I came by rail.

Q. And beat the shipment up here a little?

A. I did.

Q. This shipment, including the hides in controversy, were never intended actually to get to England, were they?

A. I withdrew them for consumption here.

Q. I know, but you intended to do that when you had them consigned to London, England, didn't you?

A. They were to be—I intended to deliver them to the Central Leather Company.

Q. Sure. You never had any idea that they would go to London, from the beginning, did you?

A. No.

Q. A great part of your sales of cattle hides go to the Central Leather Company, don't they?

A. They do.

Q. Substantially all of them, don't they?

A. No, sir.

Q. Of cattle hides?

A. We sell a great many on the outside, considerable many.

306 Q. But your big customer is the Central Leather Company?

A. Yes.

Q. You have standing contracts with them?

A. Usually we have contracts ahead.

Q. Is it your practice—yourself, personally—to accompany your shipments from El Paso to New York?

A. No, sir.

Q. This was quite an exceptional way of handiing that business, wasn't it?

A. This was a special train that was going to be run on fast time; it contained nothing else except one more car, and I had permission from the Interstate Commerce to ride on it, and I rode on it.

Q. So you wanted to come along with the shipment which represented a good deal of money, of course, to be on the ground to take care of things if anything out of the ordinary turned up, didn't you?

A. I came along with it.

Q. You came clear on to New York with it?

A. No; I left it at Galveston.

Q. I mean you came up by rail to New York, so as to be here when the shipment got here?

A. Yes.

Q. You were here at the time these suits were started, weren't you?

A. I was here at the time the good- were attached; I was in New York.

By Mr. Platt:

Q. You do not mean you were in Jersey City, you were in New York?

A. I mean the City of New York.

By Mr. Enright:

Q. Were you personaliy in the State of Coahuila between October 1st, 1913, and January 5th, 1914?

A. Personally in the State of Coahuila when?

307 Q. October 1st, 1913, and January 1st, 1914?

A. I am almost positive I was not in the State of Coahuila?

Q. That you were not?

A. Yes. I might have been, but I am quite positive I was not.

Q. Now I am going to ask you a little about this lump payment you made to cover export privileges, etc. How long a period was that to cover?

A. It was to cover what goods we then had in stock in Chihuahua—In the state of Chihuahua?

Q. How much was the payment?

A. Well, it was—we had made a number of advances—money—to the constitutional government to the Treasurer at Chihuahua and also at other points, and we were supposed—I think this actual payment on these goods that we had at Chihuahua was $4,268, gold, United States gold coin, for the transportation and exportation of certain goods.

Q. That was to cover certain specified goods?

A. Yes. The other payments, I don't remember what the amounts were nor how it was paid, because I did not pay it.

Q. That is the only lump payment that you now have in mind was $4,628—the only lump payment?

A. That was one payment. The others were made by Mr. Taylor at Chihuahua, and I do not know the amount.

Q. They were to cover particular specified goods?

A. This forty-six——

Q. Belonging to Finnigan-Brown, and were then in their warehouse in the State of Chihuahua. And of course did not include those hides in controversy here, because you did not buy them?

A. These hides in controversy, the understanding was—the trade was that they were to go out without export duty or trans-

308 portation charges.

Q. That they would go without?

A. That was in the trade, that they were to be free of duties of all kinds, export duties or transportation charges—delivered in Juarez free.

Mr. Houston: Free to what point?

A. They were to be turned over to us at Juarez and we were to be exempt from all transportation charges or customs house charges, export duties; they were turned over to us and there we accepted them in Juarez and paid our own freight from there on, after we had accepted them, but paid no export duty.

By Mr. Enright:

Q. Now, going back to the bill of sale again, this forty-seven hundred cattle hides there, they will all average about the same weight per hide, won't they?
A. No, sir.
Q. Well; on an average, I mean; running through?

Mr. Enright: Yes.

Q. There was yearlings, two year old, cows and steers mixed indiscriminately together.
Q. That is true of all of the forty-seven hundred hides, isn't it?
A. Yes.

309 ROBERT H. EWELL, sworn.

Direct examination.

By Mr. Pratt:

Q. Where do you reside?
A. City of New York.
Q. You are a lawyer?
A. Yes.
Q. And an assistant in my office?
A. Yes.
Q. Did you make a visit to Mexico last spring?
A. I did.
Q. At my request?
A. Yes.
Q. When did you go there?
A. I left New York on March 21, 1914 and got to El Paso on the 24th. I made my headquarters at El Paso from March 24th until April 18th. On April 19th I went to the City of Chihuahua and stayed there until the night of April 22nd, when I returned to Juarez and El Paso.
Q. Now while you were in El Paso between March 24th and April 18th, did you go to Juarez?
A. I went there several times a day.
Q. Did you go around the town?
A. Yes, all over.
Q. Please tell what you observed there with reference to the state of public order?
A. Everything was in good order; street cars were running; I used the telegraph from Juarez to the State of Chihuahua, and received replies on it; I noticed the police in the street; I went to the court house and to the jail and to the customs house, the im-

migration department, the schools were open; I was over there on Sunday, noticed people going and coming from and to the church; there were also Constitutionalist soldiers in the barracks and whenever you went into the City of *the* Juarez the street car on the other side of the bridge was stopped and the Immigration Inspectors of the Constitutionalists went through the car to see that no
310 undesirable people were coming into Mexico. The same thing happened when you came back the other way from Juarez to El Paso and the United States Immigration officials looked you over.

Q. Did you make purchases in Juarez and use Constitutionalist money?

Mr. Houston: I suppose it is understood this is subject to our same objection that is, it is not the proper method of proving a defacto government, and it does not relate to the State of Coahuila.

The Court: It is so understood.

Mr. Platt: Yes.

A. Then in going on the street cars we generally paid a nickel when we left El Paso and went in Juarez, and I gave a five cent paper piece of the Constitutionalist money in taking the car back from Juarez to El Paso.

Q. You say you saw the courts there?

A. Yes, sir.

Q. In session?

A. No, sir; they were not in session. The clerks were there, and stenographers and clerks.

Q. Now you say you went to Chihuahua; did you go down by railroad?

A. Yes; I went by railroad.

Q. From El Paso?

A. From Juarez.

Q. You took the train at Juarez?

A. Took the train at Juarez.

Q. Regular train?

A. Regular passenger train.

Q. Being operated by the Constitutionalists?

A. Yes; the Secretary of the Governor of the State was travelling in the private car and in the same train I took down.

Q. Your baggage was examined as you entered Mexico?

A. Yes, sir. Before I went I went to the Immigration De-
311 partment and got a passport. You have to have a passport whenever you went from one town into another.

Q. You went to the Immigration Department?

A. In Juarez.

Q. In Juarez, and got a passport?

A. On the 18th of April.

Q. When you entered Mexico was your baggage examined by the Customs House officers of Mexico?

A. Yes, it was, and a mark was put on the bag to show it had been examined.

Q. Well now what did you do and what did you observe in Chihuahua?

A. The night I got to Chihuahua I went out to the plaza, and there at night the band was playing—classical music by the way and the people were walking around the men going one way and the women the other, around the plaza, which is the custom in Mexico. I stopped at a hotel there; I paid all my expenses in Constitutionalist money—cab fare, street car fare, hotel bill. I bought a film for my camera with Constitutionalist money. On the following day, I—you asked about conditions there.

Q. Yes.

A. I saw policemen in the city—at night I would walk around the city, which had some forty thousand inhabitants, not only in the well lighted streets, but in the more distant parts of the town, in the poorer sections, and I never noticed any disturbance of any kind, and I was never molested in any way. I got on a street car one day and rode out to a suburb about five miles out, and I did not see anybody but Mexicans from the time I left the city until I got out there and came back.

Q. How were you treated?

A. Perfectly well; with perfect courtesy all the time. I passed there huge buildings which were filled with the wounded
312 which had been brought up from the battle of Torreon.

Q. You mean hospitals?

A. Hospitals—one hospital. In addition to that there was a great big car stable which had been cleaned out and used as a hospital, and they were also using the jail there as a hospital—filled with wounded soldiers—see them all around the street.

Q. Mr. Ewell, were you in Chihuahua when the United States took possession of Vera Cruz?

A. I was. The United States took Vera Cruz the very day I left Juarez.

Q. So that you were there during the first day after the occupation of Vera Cruz by the United States?

A. Yes, sir.

Q. Was General Carranza in Chihuahua while you were there?

A. Yes, sir; he was there, and I had an interview with him.

Q. Was General Villa there?

A. He was there. I had several interviews with him.

Q. Did you have any conversation with General Carranza as to the getting of testimony as to the Government of the Constitutionalists?

A. I asked him——

Mr. Enright: I object.

Q. Just respond to the question. I only asked whether you had a conversation.

A. I did.

Q. Did he refer you to any official as being the official who would give you the information on that subject?

Q. Who did he say?

—. He did.
A. Mr. Rafael Zuberan.
Q. Was that before Mr. Zuberan's testimony was taken in this case?
A. Yes, several months.
Q. When did you return from Chihuahua to Juarez?
A. The night of April 22nd.
Q. Did you have any pass or anything of that kind?
A. Yes; I got a passport. It is right here. (Produces paper.)
313 Q. Where did you get this passport?
A. I got that at the Immigration Department in the City of Chihuahua, in the Municipal Building.
Q. On the date that it bears on the stamp, April 22nd?
A. Yes, sir; I surrendered my old pass at that time—they collected my old pass and issued this.
Q. What is this, a passport?
A. That is a passport.

Mr. Platt: I offer this in evidence.

Paper marked Exhibit D-13.

Q. Have you the railroad ticket that you used on the train coming up?
A. Yes. You have it in that bundle there. That is it. (Produces paper.)
Q. Is this it?
A. Yes, sir.
Q. This pink paper at the top?
A. Yes, sir.

Mr. Platt: I offer that in evidence.

Paper marked Exhibit D-14.

Q. Now pasted on this same black sheet are those postage stamps that you bought in Mexico?
A. Yes.
Q. Where?
A. At the post office.
Q. Where?
A. In the post office building at the City of Chihuahua.

Mr. Platt: I offer those also in evidence. They can come in under the same exhibit. They are all pasted on one sheet.

Q. Now take this sheet. Is this Constitutionalist money that you got in Chihuahua?
A. I got that in El Paso.
Q. Got it in El Paso. Is that the same as has already been
314 put in evidence?
A. Yes, sir.
Q. Then I will not put it in. Did you use the telegraph?

A. I did
Q. Received telegrams when you were in Chihuahua?
A. I did.
Q. Is that a telegram?
A. That is a telegram I received at the telegraph office in the City of Juarez; it was sent to me from the State of Chihuahua.

Telegram offered in evidence and marked Exhibit D-15.

A. I said that telegram was sent to me; it was really sent to Mr. Rios, who received it for me at the telegraph station in Juarez, and I was there when he received it.
Q. Now, Mr. Ewell, while you were in Mexico did you see any Consular officers of the United States?
A. I did.
Q. Did you see at Chihuahua Mr. Carruthers?
A. No; I saw Mr. Carruthers at Juarez.
Q. You saw him at Juarez?
A. Yes; he was the Torreon Consul.
Q. He was the Torreon Consul?
A. Yes.
Q. Did you see him and talk with him at Juarez?
A. Yes; several times.
315 Q. Mr. Ewell, while you were at El Paso did you go out to Fort Bliss?
A. I did, yes, sir.
Q. Is that a United States Government fort?
A. It is.
Q. How far from El Paso?
A. About four miles.
Q. Did you see Mexican soldiers interned there?
A. I did.
Q. Did you see soldiers interned there of both—from both the Huertist and Constitutionalist side?
A. I did.

Mr. Enright: I object, unless he shows the basis of his knowledge there.

Q. How did you know it?
A. Why, perfectly easy to tell it. When I went through Mexico the Constitutional soldiers are all uniformed in khaki uniforms, the same as our soldiers have in this country. The Huerta soldiers, and I saw lots of them brought back from the front, were in dirty,
316 torn blue overalls, and blue blouses, as a rule, and they generally did not have any hats on or any shoes on, and you could spot them at once as soon as you saw a Huerta soldier or a Constitutionalist soldier. Except at Fort Bliss, the so-called rurales of the Huerta army were good looking soldiers. They are large strapping men, well clothed, with great sombreros, with silver bands around them, but there were, I do not suppose a dozen of the rurales out of five thousand of the Huerta soldiers at Fort Bliss. I should say

there were about seventy-five or eighty Constitutionalist soldiers there.

Q. Those were soldiers that had been interned there, who had come into the United States after the battle of Ojinaga——

Mr. Enright: Objected to on the ground that he has not shown the source of his knowledge.

The Court: How do you know?

317-27 Cross-examination.

By Mr. Houston:

Q. Mr. Ewell, you did not go to Coahuila at all, did you?

A. No.

Q. You are not now attempting to give any testimony as to the authority of the United States Consuls you refer to or as to their being accredited to the Constitutionalists or anything of the sort, are you?

A. No.

Q. Is it your understanding that they were the same consuls who were there during the Madero administration?

A. That is what I understand, yes.

Q. And they have merely continued to act?

Fletcher?

A. Yes. I saw Mr. Letzer, our Consul at the City of Chihuahua, but I understand he was consul there in the time of Madero.

Q. And the American Consul continued whether Zapatta or Oroszco or Huerta or Villa happened to be there?

A. I doubt—I don't know that. I don't know about that.

Q. As far as you know?

A. As far as I know.

328 *Plaintiff's Testimony in Rebuttal.*

Mr. Enright: I would like to read some three or four of the interrogatories addressed to the defendant. I am reading from the Pennsylvania Railroad interrogatories now:

"Ninth Interrogatory. Were said hides weighed at the point of ultimate destination; if so, give actual weights there ascertained and the date and place of weighing."

"Answer to Ninth Interrogatory. Yes, the dry hides, being 1,250 in number, weighed 25,400 pounds at the Horton Tannery station, Pennsylvania, which was the point of their ultimate destination. They were weighed at said point, according to the best of our information and belief, on or about February 13, 1914."

In the Erie suit I will read the corresponding interrogatory:

"Eighth. The wet salted hides, 273 bundles, weighed 21,608 pounds."

"Ninth Interrogatory. Were said hides weighed at the point of ultimate destination; if so give actual weight there ascertained and the date and place of weighing?"

"Answer to Ninth Interrogatory. The dry hides, being 1,193 in number, weighed 25,578 pounds at Clossburg, Pennsylvania, which was the point of their ultimate destination. They were weighed at said point according to the best of our information and belief, on or about February 15, 1914; three of the said wet bundles were retained at New Jersey, the remaining 270 bundles weighed 21,450
329–30 pounds at Rib Lake, Wisconsin, being the point of their ultimate destination. They were weighed on or about February 12, 1914, to the best of our information and belief."

Mr. Enright: I offer upon the record, a copy of my letter to William J. Bryan, Secretary of State, dated August 14, 1914, and the reply thereto, addressed to McDermott & Enright, dated August 20, 1914, and signed for the Secretary of State, Robert Lansing, Counsellor.

Papers marked Exhibits P-10 and P-11.

For the sake of the record we offer the text of the Hague Convention, and particularly call attention to certain provisions which we think are pertinent.

Mr. Platt: I do object to it, on the ground that it is immaterial and irrelevant. I do not object to it on the ground that it is not proven by the documents presented to the court until I see that document.

The Court: All right. I ask that you particularize why you think it is irrelevant.

Mr. Platt: Because I do not understand that it has any binding effect in law or in fact upon this court as applying to the issue in this case.

The Court: May I ask you then this further: Do I understand your objection is further upon this ground, which I think I remember your stating early in the case, that its only value is through the channels of diplomacy as between this nation and any other that may have entered into it?

Mr. Platt: I do not know that, but I shall object to it on that ground, and I also object on the ground that in any event it is not binding—it cannot be taken into account in this court, because this court has no power to question the acts of the Constitutionalists in making this seizure.

Mr. Enright: Mr. Houston calls my attention to the fact that one of these proclamations by President Wilson refers to a prior condition of affairs as having changed, that condition being evidenced by the proclamation of President Taft, so I think to bring the whole matter before the court, the Taft Proclamation of March 2, 1912, and March 14, 1912, ought to be offered, and I do offer it.

The Court: Any objection to that?

Mr. Platt: No.

Mr. Houston: The Taft Proclamation of March 2, 1912, appears in the United States Statutes at large, Volume 37, No. 2, page 1732.

President Taft's Proclamation of March 14, 1912, appears in the United States Statutes at large, Volume 37, No. 2, page 1733.

331 Mr. Enright: I offer the Constitution of Republic of Mexico, being the Constitution of 1857; and the volume I have here is a volume bearing the imprint of the Government Printing Office, at Washington, 1906; the text of the Constitution in the left hand column is in the original Spanish and the translation is opposite each article.

Mr. Platt: Do you refer to any particular section?

Mr. Enright: Yes. For instance:

"Article 22. Punishment by mutilation and infamy by branding, flogging, beating with sticks, torture of whatever kind, excessive fines, confiscation of property, or any other penalties, unusual, or working corruption of blood, shall be forever prohibited."

That is the section I have reference to.

332 Mr. Enright: Deposition of Robert E. Paine is here read into the record.

333 Robert E. Paine, first being sworn by John M. Enright, Master in Chancery, acting by consent, testifies as follows:

Direct examination.

By Mr. Enright:

Q. What is your residence?

A. Houston, Texas.

Q. And your occupation?

A. Various,—I am with the Central Leather Company, and have been for some years, manager of the hide department.

Q. You are a director also of the Central Leather Company?

A. Yes, sir.

Q. And have been for some years?

A. Yes.

Q. Do you hold any other office with the Central Leather Company, other than director and manager of the hide department?

A. I don't think so, unless that is an office, member of the executive committee.

Q. You are a member of the executive committee of the board of directors?

A. Yes.

Q. The chief business of the Central Leather Company, properly speaking, is the tanning of hides and selling?

A. That is a large part of it.

Q. And in conducting that business you are large purchasers of hides?

A. Oh, yes.

Q. What is your connection with the Finnigan Brown Company?

Mr. Ewell: Objected to on the ground that it is immaterial, irrelevant and incompetent. I will put in a general objection to all questions along this line.

A. I am a director.

Q. Do you hold any other office or connection with Finnigan-Brown Company?

A. No.

Q. How long have you been a director of the Finnigan-Brown Company?

A. For some years, I think since its organization.

Q. Does your connection with the Central Leather Com-
334 pany go back further than your connection with the Finnigan-Brown Company?

A. I think the Finnigan-Brown Company was organized in 1909, I couldn't say the year that was incorporated, but my connection with the Central Leather Company dates from March, 1908.

Q. Who are the other directors of the Finnigan-Brown Company?

A. Frank W. Brown and W. E. Grundler, I believe.

Q. The Finnigan-Brown Company is a Texas corporation?

A. Yes.

Q. Where does it have its office?

A. They have—the business is done at El Paso, and I think they also have an office in Houston; I think their charter calls for an office in Houston; that is a matter of record, where their headquarters are, I expect it is on record.

Q. Who are the officers of the Finnigan-Brown Company?

A. Mr. Grundler is president, Mr. Brown is vice-president and general manager.

Q. And you have no office?

A. No.

Q. Has Mr. Grundler any connection with the Central Leather Company?

A. No.

Q. The Finnigan-Brown Company are dealers in raw hides, aren't they?

A. Yes.

Q. And the Central Leather Company during the full time that you have been connected with both companies, has obtained many of its hides through the Finnigan-Brown Company, hasn't it?

A. Oh, yes.

Q. Is the Central Leather Company, directly or indirectly the owner of any of the capital stock of the Finnigan-Brown Company?

Mr. Ewell: Objected to on the ground that it is immaterial, irrelevant and incompetent, also to this whole line of questions, the same as before.

A. Indirectly.

335 Q. In what way is it indirectly the owner of such stock?

A. Through the John Finnigan Company of Houston; the Central Leather Company through individuals own the entire capital stock of the John Finnigan Company.

Q. A Texas corporation?

A. A Texas corporation, with an office at Houston, and in turn John Finnigan Company own, through Mr. Grundler and myself,

two-thirds of the stock of Finnigan-Brown Company, the remaining third being owned by Frank W. Brown.

Q. So that practically Mr. Grundler and yourself represent the Central Leather Company on the board of directors of the Finnigan-Brown Company?

A. Yes.

Q. When the Central Leather Company obtains hides through the Finnigan-Brown Company, the transactions go through the books, I presume, in the shape of sales?

A. Just the same as though he bought from any one else.

Q. And Finnigan-Brown Company has a running account all the time?

A. No, we don't have any business—the Central Leather Company don't keep an account with the Finnigan-Brown Company; the transactions are all consummated through John Finnigan Company at Houston; they put the offerings up to us.

Q. John Finnigan Company put the offerings up to the Central Leather Company and there is a local running account between the John Finnigan Company and the Central Leather Company with periodical settlements?

A. They have an account here, of course.

Q. And then when you accept an offering from the John Finnigan Company the hides come from the Finnigan-Brown Company and you give credit to the John Finnigan Company, is that it?

A. No, they draw for them; they usually draw, that is a
336 rule, they draw just as you would if we bought from you.

Q. You mean——?

A. The John Finnigan Company will draw for them; sometimes Finnigan-Brown Company will draw from the Leather Company for account of the John Finnigan Company.

Q. And by "draw on the Leather Company" do I understand that the drafts come through at the same time that the shipment comes through?

A. Not necessarily, but a good many come at the time of the shipment, and then Finnigan will draw some on open account.

Q. Do the answers you have given about the relations of these three companies, the stock relations and the commercial relations, not only apply to the present time but to the time when these hides in suit got to New York, that was in January, 1914?

A. The same, no change.

The Witness: A draft for a specific invoice is always made by John Finnigan Company, but Finnigan-Brown Company will often draw for round amounts on the Leather Company on instructions of John Finnigan Company for the account of John Finnigan Company.

Q. You remember the time these hides in the present suit were replevined in Jersey City, don't you?

A. Yes.

Q. When were they settled for by the Central Leather Company?

A. Well, they were applied on to the different contracts that were unfilled at that time, practically all of them, I think.

337 Q. By settled for I mean paid for; how long after the replevin suit were they paid for?

A. I don't know, that is a question that is a little difficult to answer. You see they were applied on to the different invoices and invoiced by John Finnigan Company; just how long after the arrival of the goods here it is hard to say, I would have to look at the records to get that.

Q. Can you have one of your assistants look for that?

A. Yes, I think.

Witness sends for information.

Q. These hides were settled for by weight, were they not?

A. Yes.

Q. And the weight was ascertained after arrival at the tannery?

A. Yes. The green salt hides were weighed here, the dry hides, the tannery weights governed.

Q. So as to the dry hides the settlement would not be made until some time after the arrival at the tannery, and the checking up of the weights, that is correct?

A. They would be invoiced, it would be several days after arrival before they were invoiced.

Q. The green salted hides were weighed on the dock here in New York?

A. Yes, they were weighed, and after sufficient time to get the invoice from Houston.

Q. That would be several days?

A. Oh, yes.

Q. Mr. Paine, after having obtained the information from your books what have you to say as to the time and manner in which these hides were settled for?

A. They were invoiced to us February 25th, 1914, billed to us February 25th, credited to the general account of John Finnigan of Houston.

Q. There was no money passed at that time, it was simply credited?

A. Credited to their open account.

338 Q. Do you know how the John Finnigan Company claimed title, if it did claim title, to these hides in suit?

A. They merely handled the business for Finnigan-Brown Company.

Q. You have said this shipment was taken over by the Leather Company under a contract with the John Finnigan Company; that is a written contract, is it?

A. Yes, applied to different contracts that were open at the time.

Q. There were several contracts at the time of starting this suit, open between the Leather Company and the John Finnigan Company?

A. Well, there were a couple of unfilled contracts.

Q. And in those contracts the John Finnigan Company was a

party merely as a factor or agent for the Finnigan-Brown Company, is that correct?

A. Yes.

Q. And when the Leather Company gave the credit for these hides to the John Finnigan Company it gave the credit to the John Finnigan Company as the agent for the Finnigan-Brown Company?

A. No, we don't follow the credit; they are credited to John Finnigan's account and they make their own distribution in Houston.

Q. That is, you leave the John Finnigan Company to settle up its own relations with the Finnigan-Brown Company?

A. Yes.

Q. Mr. Harkness has produced the telegrams and letters out of which these transactions he says arose; I call your attention to the telegram from John Finnigan Company to the Central Leather Company, Houston, Texas, October 8, 1913, and particularly the part reading as follows:

"Also book for account Finnigan-Brown Company three thousand each dry and wet salt Mexican hides from Chihuahua section at twenty-nine half and sixteen half to be shipped first opportunity."

Some of these hides involved in this present suit were
339 shipped under the acceptance of that offer, were they not?

A. Yes, that offering; we don't book them for account of Finnigan-Brown Company, we merely book them for account of John Finnigan, and we just specify those are the hides that are to come.

Q. John Finnigan Company here wires you "book for account of Finnigan-Brown Company;" you did book that order following that telegram?

A. I was in South America at the time this all passed; we don't buy from Finnigan-Brown Company; they may not read for account of Finnigan-Brown Company, but that merely means those are the hides, that they are Finnigan-Brown hides from Chihuahua section.

Q. But you gave the credit to Finnigan-Brown Company?

A. The Leather Company doesn't know Finnigan-Brown. The dealings are all with John Finnigan and Company.

Q. And they do know John Finnigan as agent or factor of Finnigan-Brown Company?

A. We know they handle the business of Finnigan-Brown Company.

Q. Who are the directors of the John Finnigan Company?

A. E. W. Grundler, Fred. E. Knapp, A. T. Lynch and myself, and I think A. L. Batjer.

Q. Who are the officers of the John Finnigan Company?

A. I am president, Fred. E. Knapp is vice-president, and Mr. Grundler is treasurer, and Mr. Batjer is secretary.

By Mr. Houston:

Q. What is Mr. Lynch's position with the Central Leather Company?

A. He is merely assistant in the hide department.

Q. Is Mr. Knapp connected with the Central Leather Company?
A. Secretary.

340 By Mr. Enright:

Q. He is an employe?
A. Yes, he is assistant to Mr. Grundler.
Q. Calling your attention to the two written communications that are attached to these telegrams dated October 9th, 1913, and the other October 14, 1913,—take the one of October 9th addressed to the Central Leather Company, Hide Department.
"As per their night letter-gram of the 8th instant, we book you for account of John Finnigan Company, Houston, Texas, for shipment from (specifying places and amounts) all on usual conditions and selection (signed), Yours truly, The Finnigan Company, A. T. Lynch."
The Finnigan Company is a New York corporation, isn't it?
A. Yes.
Q. Just how do they figure in the transaction?
A. As a matter of record to keep a record of all the contracts; it don't pass through their books at all; they sell stuff outside.
Q. The Finnigan Company does?
A. The Finnigan Company may sell some business here for John Finnigan Company; but all of these are for our records.
Q. Is the account with the Leather Company with the John Finnigan Company or with Finnigan Company?
A. No, it is very plain here.
Q. The Finnigan Company, the New York corporation, is a mere bookkeeping medium?
A. They only run these as far as we are concerned, just run these contracts through; the Finnigan Company doesn't have anything to do with this stuff in doing this business any more than to make the contract.
Q. The Finnigan Company of New York has its office right here in the Central Leather Company's office?
A. No, they have an office down on Ferry Street.
341 Q. The A. T. Lynch who signed that is the same Lynch who is in the hide department of the Leather Company?
A. Yes. This is a matter of record, that goes into our files; all these contracts are for our files the same as though they were for some outside concern.

By Mr. Houston:

Q. The Finnigan Company of New York had no pecuniary interest in these hides at any time?
A. No.

By Mr. Enright:

Q. Just now you spend most of your time when you are transacting business in New York, don't you, and you actually live here, although you still retain your legal residence at Houston?

A. I have been here for several years, yes, but my legal residence is Houston.

Q. I notice from the bill of sale from Villa to the Finnigan Brown Company they included, not only cattle hides, but calf skins, goat skins and bristles; did the Central Leather Company become the purchaser of any of those?

Mr. Ewell: Objected to as being entirely immaterial, irrelevant and incompetent.

A. No.

Cross-examination.

By Mr. Ewell:

Q. Mr. Paine, did the Central Leather Company organize the Finnigan-Brown Company?

A No.

By Mr. Harkness:

Q. Mr. Paine, was the John Finnigan Company, or its predecessor, in existence before the Central Leather Company acquired any interest in those concerns.

342 A. Yes, Mr. Finnigan and I were together; there was a partnership from 1881 up to 1900.

Q. And during that period of that partnership did the Central Leather Company have large dealings with you in the purchase of hides?

A. Oh, yes.

Q. Subsequent to 1900?

A. In 1900 it was incorporated.

Q. Did the Central Leather Company have any interest in the concern at that time?

A. No.

Q. The Central Leather Company or its predecessor, the United States Leather Company?

A. No, not until 1904.

Q. What interest did the Central Leather Company, or its predecessor the United States, acquire at that time?

A. 50 per cent.

Q. In the John Finnigan corporation?

A. Yes.

Q. How long did that situation remain unchanged?

A. Well, that remained unchanged, I think, until 1912.

Q. John Finnigan had meanwhile died?

A. Yes.

Q. As a result of his death was there a necessity for the liquidation of the interest of his estate; did subsequently his heirs insist on a liquidation of his interest in the John Finnigan Company?

A. There was a subsequent liquidation of their interest in the company.

Q. And at that time, in order to liquidate their interests the Leather Company acquired all the interests?

A. Yes.

Q. According to your recollection when was the Finnigan-Brown Company organized?

A. I think it was 1909.

Q. At the organization of that company did Brown have an individual and personal interest of one-third?

A. He had a third interest in the net earnings of that point, of the El Paso business.

343 Q. Had he had that interest for some years prior to the incorporation of the Finnigan-Brown Company?

A. Yes.

Q. That business conducted by Brown at that point at El Paso was incorporated as a matter of convenience?

A. Yes, it was incorporated so that his interest would be defined.

Q. Had Brown been in charge of the conduct of that business for several years prior to the incorporation?

A. Oh, yes.

Q. And has he since the incorporation in 1909 practically been in charge of the operations of the Finnigan-Brown Company?

A. Yes.

Q. Are the purchasers of hides and the prices that are paid for them left entirely to Brown?

A. Oh, yes.

By Mr. Ewell:

Q. And when these offerings come in from the John Finnigan Company are they sometimes rejected by the Central Leather Company?

A. Often; we don't always agree on prices, you know; in fact our business with Finnigan-Brown Company is the same as it would be with an outsider; that is, the purchase of those hides is the same as though they were an outside concern.

By Mr. Harkness:

Q. How long since you have attended a director's meeting of the Finnigan-Brown Company?

A. I expect it is more than two years.

Q. Do you have any personal knowledge of the conduct of that business, of the routine conduct of that business?

A. No.

Q. Any personal knowledge of their purchases and sales except of the sales that come to the Central Leather Company?

A. No,—occasionally I know what they sell on the outside.

344 Q. Does the John Finnigan Company exercise any direction over the manner in which Brown conducts the business of the Finnigan-Brown Company?

A. Well, they keep Brown thoroughly advised on the market, and knowing about what he can get for stuff he can buy intelligently.

Q. But they leave him free to conduct the business according to his own discretion?

A. Free to conduct the business according to his own discretion as to what he will pay.

Redirect examination.

By Mr. Houston:

Q. Does the John Finnigan Company sell all the Finnigan-Brown Company's hides?

A. No, I wouldn't say they did.

Q. The bulk of them?

A. Brown makes sales of stuff out there, out at El Paso.

By Mr. Enright:

Q. By comparison, does Brown sell very much, compared with the total sales of the Finnigan-Brown Company?

A. I wouldn't want to say.

Q. Without being exact, is the bulk of Finnigan-Brown Company's business through Finnigan Company, the bulk of the hides?

A. Yes.

Q. Aside from hides, Finnigan-Brown Company deal in other products?

A. Yes.

Q. Does the Finnigan-Brown Company sell in the New York market to other customers than the Central Leather Company?

Mr. Ewell: I object to this line of questions as being immaterial, irrelevant and incompetent, having nothing to do with the issues in this case.

A. They could if they so desired.

Q. Do they?

A. Well, now, I would have to get their records to answer that.

345 Q. Do you know of any business done in this market with any other customer?

A. They sell some other hides; they sell some hides east that don't come to us, I am satisfied, that don't come to the Leather Company.

Q. Mr. Brown comes to New York periodically, doesn't he?

A. Well, he is here occasionally.

Q. And whenever he comes to New York he comes in to see you, doesn't he?

A. Oh, yes.

Q. And then you talk over the affairs of the Finnigan-Brown Company?

A. Well, not particularly.

Q. What does he come in to see you for, then, except to talk over the affairs of the company?

A. We talk over the markets.

Q. I mean, whenever Mr. Brown comes to New York he comes on business, doesn't he, of one sort or another?
A. I don't know; his family is in the east now; his last trip was to see them, I think; I haven't seen him for some time.
Q. When he comes to see you he talks over business with you?
A. To know what the market is, to get a line on the market.
Q. And how business is going, when he comes up here doesn't he come here to your offices and go over your joint business ventures?
A. No, I couldn't say he does; he doesn't come for that purpose; when he comes here to see me we will talk about the markets, of course; I let him know my ideas on the market.
Q. And the purpose of his getting an accurate line on the market is to aid him in making purchases in the southwest?
A. That is what he wants to get a line on the markets for.

By Mr. Houston:

Q. It is fair to say, isn't it, that the bulk of the hides of Finnigan-Brown Company are sold through the John Finnigan Com-
346–52 pany to the Central Leather Company?
A. They buy a good many of them.
Q. You would say that the bulk of their business, speaking generally?
A. As I say, they buy a good many of them.

By Mr. H-rkness:

Q. I think you testified that at the time of these contracts you were not in this country, and you had nothing to do with this transaction?
A. No.

By Mr. Enright:

Q. Were you in this country at the time the deliveries were made in New York?
A. Yes.
Q. So you are familiar with whatever negotiations there may have been between John Finnigan Company, Finnigan-Brown Company and the Central Leather Company as to the transit of these hides?
A. I knew when they arrived here.

Mr. Enright: I ask to have marked for identification the two sets of documents which have been called the contracts of October 9, 1913, and October 14, 1913, between the Finnigan Company and Central Leather Company.

They are marked Plaintiffs' Exhibits A and B for Identification of October 2, 1914, respectively.

By Mr. Houston:

Q. These two sets of documents which have just been marked in

evidence contain the contract under which the hides in suit were sold to the Central Leather Company, do they not?

A. I think so, I think they were applied on those contracts.

353 Both sides rest.

Motion to Direct a Verdict.

Mr. Platt: If the Court please, I move for the direction of verdict in each case for the defendant. I move on all the grounds that were claimed in the motion for the non-suit at the close of the plaintiff's case, and I move also on the ground that it appears by the evidence that at the time of the seizure of the goods in suit a state of civil war existed *on* Mexico between the Federals or Huertistas and the Constitutionalists under Carranza, and that the seizure was an act of legitimate warfare, and that the seizure cannot be questioned in this court on this trial; and that the acts of the soldiers in making the seizure were done by order of the authority of the Government or the party known as the Constitutionalists in civil war, and that the title passed to the captor on taking possession, and passed by sale to the defendant, and that the validity of the sale cannot be questioned in the courts of this country.

I also move on the ground that it appears by the undisputed evidence that the defendant acquired a valid title to the hides in suit through the seizure of the hides by the Constitutionalists.

Also on the ground that the validity of that act of seizure cannot be questioned.

354 *Plaintiff's Motion for Direction of Verdict.*

Mr. Enright: I move for direction of verdict in favor of the plaintiff Oetjen against the defendant Central Leather Company in the suit in which the Erie Railroad Company is named as a co-defendant for eleven thousand and ten dollars and eighty-three cents, with interest from January 22, 1914.

The Court: What does that date signify?

Mr. Enright: That is the date of the writ of replevin on which the goods were taken by the Sheriff. I make a similar motion for direction of verdict in favor of the plaintiff Oetjen against the defendant Central Leather Company in the suit in which the Pennsylvania Railroad Company is joined as a co-defendant for $7,493, with interest thereon from the same date, January 22nd, 1914.

The Court: Also the court has in mind that you have an undetermined motion directed to some testimony that has been offered on the part of the defendant, which was the general objection that you placed to it and which was reserved for determination until the conclusion of the entire case. Are you urging that now or are you abondoning it?

Mr. Enright: No, I am not abandoning it.

The Court: I suppose that may be considered at the same time that we are considering the two counter motions that have been made,

one on the part of the defendant to direct a verdict and one on your part to direct a verdict?

355 Mr. Enright: I think necessarily the decision of the motion to strike out the evidence is bound up in the motion for judgment. However, in order to avoid any inference that I am waiving the objection to the evidence, I also move, in each case, to strike out the evidence taken during the progress of the trial under the several reserved objections and motions.

The Court: There is no objection to the Court's considering that motion at the same time as it considers your several motions now to direct verdicts?

Mr. Platt: I see no objection to it.

The Court: The present status of the cases at bar is that a motion to direct a verdict has been made by defendants and a like motion has been made in favor of the plaintiff Oetjen. There is also before the court a motion on the part of the plaintiff to strike out all testimony produced by the defendants tending to show conditions in Mexico, such motion being urged upon the ground that the

356 testimony is irrelevant, immaterial and incompetent. The question of recognition of sovereignty or beligerency is undoubtedly a political, not a judicial one. In the present cases the question whether or not the political department or departments of the United States have recognized a state of civil war and belligerency is a question to be determined by the court and not by the jury. I have no difficulty in finding that the testimony in question for the purpose of informing and assisting the court in determining that question is proper and not subject to the objection urged against it. The only force to the objection can be that it deals with and treats of the question which is not a proper question for submission to the jury. It is relevant, material and competent for the use of the court, together with all other reliable information and facts that may be known and gathered and found by the court in assisting to construe and determine the meaning and effect of state papers.

The defendants moved for a direction of verdict in their favor upon all the grounds urged upon their motion for non-suit, being five in number, and also upon three other specific grounds. In deciding these motions before me it is not necessary to further treat of the grounds 1, 2, 3 and 4 urged on the motion for non-suit.

From the most careful and thoughtful consideration that I have been able to give to the messages and proclamations of President Wilson, in evidence in these causes, as read and construed and understood by me, with the aid and assistance of the testi-

357 mony portraying events and conditions in Mexico, I am brought to a conclusion which I was unable to reach at the time of deciding the motion to non-suit. I am now brought to the irresistible conclusion that a state of civil war existed in Mexico and that the political department of the United States has recognized a state of civil war therein and has recognized the belligerency of the contending forces, namely the Huertusts and the Constitutionalists, and has declared the position of the Government of the United

States as to the belligerents to be one of neutrality. I cannot well see how there can be a declaration of neutrality as between this government and the contending forces in Mexico without, as a matter of fact as well as a matter of law, a recognition of belligerency following. Finding such a recognition of belligerency, I find the seizure complained of constitutes an act that cannot be questioned in this court. The plaintiff contends that the seizure complained of does not constitute and cannot be defended as an act of legitimate warfare under The Hague Convention treaties. I am of the opinion that the provisions of The Hague Conventions are only binding and effective as between contracting powers or where the belligerents were parties to the Convention. I cannot see that in this sense the Constitutionalist forces, whose acts are complained of, are bound thereby. This motion to direct a verdict is accordingly granted.

358 *Defendant's Exceptions.*

Mr. Carpenter: The plaintiff Oetjen objects and excepts to the Court's directing the verdict in favor of the defendant and against the plaintiff; also objects and excepts to the Court's refusal to direct a verdict in favor of the plaintiff Oettjen, and in addition objects and excepts to the Court's refusal to grant said plaintiff's motion to strike out the testimony as made in the motion.

359 EXHIBIT P-9.

Know all men by these presents:

That whereas, the undersigned, Manuel M. Martinez & Company, a co-partnership composed of Manuel M. Martinez and Gregorio Canales, and engaged in the hide business at Torreon, State of Coahuila in the Republic of Mexico are the owners of the property described in the annexed schedule; and

Whereas, the undersigned has or may have certain claims or causes of action to recover the said property or the value thereof from the Central Leather Company and others,

Now, therefore, this instrument witnesseth, that for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned hereby bargains, sells, assigns and sets over unto Henry A. Oetjen, of Jersey City, New Jersey, his executors, administrators and assigns, all the right, title and interest of the undersigned in and to the said property and all claims and causes of action which the undersigned has or may have against any persons, corporations or vessels for the value of the said property and damages for the detention thereof, and all sums or amounts which are or may be due to the undersigned upon or by reason of such claims and causes of action, and all interest which now is or may hereafter become due thereon, with full power and authority for his own use and at his own cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part of such sums or amounts, and to prosecute and withdraw any suits or pro-

ceedings at law, in equity or in admiralty for such sums or amounts, and to issue execution therefor.

360 Witness, our hands and seals this 28th day of January, 1914.

MANUEL M. MARTINEZ & COMPANY,
By MANUEL M. MARTINEZ.

In the presence of
O. R. HOUSTON.

Schedule.

113 Bales of Goat Skins marked [M] New York and numbered from 1 upwards.
11 Bales of Horse Hair marked [M] New York and numbered from 1 upwards.
2449 Dry Hides marked [M] and some also bearing the mark "M. M. Martinez y Cia."
6 Bales of Calf Skins marked [M].
300 Bundles of Green Salted Hides containing in the aggregate, 600 hides marked with a piece of white cloth.

EXHIBIT P-10.

August 14, 1914.

Hon. William J. Bryan, Secretary of State, Washington, D. C.

DEAR SIR: It has become material to prove in a law suit now pending in the Houston County Circuit Court of New Jersey respecting the title to certain merchandise seized by soldiers under the command of Francisco Villa, at or near the City of Torreon, in the Republic of Mexico, on or about the first of October, 1913, and subsequently sold by said Vilia on or about January 3, 1914, whether or not the United States on or prior to either of said dates, or at any time subsequent thereto, has recognized a government in
361 the Republic of Mexico headed by Venustiano Carranza as First Chief of the Constitutionalists.

2. Whether the Government of the United States has within said period recognized any government in the Republic of Mexico headed by Francisco Villa.

3. Whether the Government of the United States within said period has recognized as belligerents, within the intent and meaning of the law of nations, any forces operating in the Republic of Mexico under the command of Venustiano Carranza or of other individuals subordinate to him.

4. Whether the Government of the United States within said period has recognized as belligerents, within the intent and meaning of the law of nations, any forces operating in the Republic of Mexico under the command of Francisco Villa, or other individuals subordinate to him.

Will you kindly furnish us with the answers to above questions and greatly oblige,

Very truly yours,

McDERMOTT & ENRIGHT.

J. M. E.-A. M. B.

362 EXHIBIT P-11.

Address Official Communications to the Secretary of State, Washington, D. C.
(Government Seal.)

Department of State,

Washington.

August 20, 1914.

Messrs. McDermott and Enright, 75 Montgomery Street, Jersey City, New Jersey.

GENTLEMEN: The Department acknowledges the receipt of your letter of August 14th, in which you propound certain inquiries regarding the recognition, if any, extended by the United States Government to any government or forces in Mexico, headed by General Venustiano Carranza, or by General Francisco Villa, or by their subordinates. In reply you are informed that the United States Government has not at any time recognized any government in the Republic of Mexico headed by Venustiano Carranza or by Francisco Villa, nor has it recognized as belligerents, within the intent and meaning of the law of nations, any forces operating in the Republic of Mexico under the command of said Carranza or Villa or of other individuals subordinate to those persons or either of them.

I am, Gentlemen,

Your obedient servant,

For the Secretary of State:

(Signed) ROBERT LANSING, *Counselor.*

812.00/12898.

363 PLAINTIFF'S UNNUMBERED EXHIBIT REFERRED TO ON PAGE 352 OF STATE OF CASE.

Proclamation of President Taft, March 2, 1912.

By the President of the United States of America.

A Proclamation.

Whereas serious disturbances and forcible resistance to the authorities of the established Government exist in certain portions of Mexico; and

Whereas under these conditions it is the duty of all persons within the jurisdiction of the United States to refrain from the commission of acts prohibited by the law thereto relating and subversive of the tranquil-ity of a country with which the United States is at peace; and

Whereas the laws of the United States prohibit under such circumstances all persons within and subject to their jurisdiction from taking part contrary to said laws in any such disturbances adversely to such established government; and

Whereas by express enactement if two or more persons conspire to commit an offense against the United States, any act of one conspirator to effect the object of such conspiracy renders all the conspirators liable to fine and imprisoment; and

Whereas there is reason to believe that citizens of the United States and others within their jurisdiction fail to apprehend the meaning and operation of the applicable laws of the United States as authoritatively interpreted and may be misled into participation in transactions which are violations of said laws and which will render them liable to the severe penalties provided for such violations;

364 Now, therefore, in recognition of the laws governing and controlling in such matters as well as in discharge of the obligations of the United States towards a friendly country, and as a measure of precaution, and to the end that citizens of the United States and all others within their jurisdiction may be deterred from subjecting themselves to legal forfeitures and penalties;

I, William Howard Taft, President of the United States of America, do hereby admonish all such citizens and other persons to abstain from every violation of the laws hereinbefore referred to, and do hereby warn them that all violations of such laws will be rigorously prosecuted; and I do hereby enjoin upon all officers of the United States charged with the execution of such laws the utmost diligence in preventing violations thereof and in bringing to trial and punishment any offenders against the same; and finally I do hereby give notice that all persons owing allegiance to the United States who may take part in the disturbances now existing in Mexico, unless in the necessary defense of their persons or property, or who shall otherwise engage in acts subversive of the tranquil-ity of that country, will do so at their peril and that they can in no wise obtain any protection from the Government of the United States against the appropriate legal consequences of their acts, in so far as such consequences are in accord with equitable justice and humanity and the enlightened principles of international law.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 2nd day of March, in the year of our Lord one thousand nine hundred and twelve,

365 and of the Independence of the United States of America the one hundred and thirty-sixth.

[SEAL.] WM. H. TAFT.

By the President:
HUNTINGTON WILSON,
Acting Secretary of State.

PLAINTIFF'S UNNUMBERED EXHIBIT REFERRED TO ON PAGE 352 OF STATE OF CASE.

Proclamation of President Taft, March 14, 1912.

By the President of the United States of America.

A Proclamation.

Whereas, a Joint Resolution of Congress, approved March 14th, 1912, reads and provides as follows:—"That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."

And whereas, it is provided by Section II of the said Joint Resolution, "That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both."

Now, therefore, I, William Howard Taft, President of the United States of America, acting under and by virtue of the authority conferred in me by the said Joint Resolution of Congress, do
366 hereby declare and proclaim that I have found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war procured from the United States as contemplated by the said Joint Resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the Joint Resolution above set forth, hereby made applicable to Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said Joint Resolution and this my Proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fourteenth day of March in the year of our Lord one thousand nine hundred and twelve and

of the Independence of the United States of America the one hundred and thirty-sixth.

WM. H. TAFT.

By the President:
HUNTINGTON WILSON,
Acting Secretary of State.

367 EXHIBIT D-1.

Plan de Guadalupe in Spanish.

EXHIBIT D-1-*a*.

(Translation of D-1.)

Manifesto to the Nation.

Whereas, General Victoriano Huerta, to whom the Constitutional President, Mr. Francisco I. Madero, had entrusted the defense of the institutions and the legality of his government, in joining the rebel enemies in arms against that same government, in order to restore the late dictatorship, committed the crime of treason in order to achieve power, arresting the President and Vice-President, as well as their Ministers, compelling them through violent means to resign from their offices, which is proved by the messages which the same General Huerta addressed to the Governors of the States, communicating to them that held prisoners the Supreme Magistrates of the Nation and its Cabinet.

Whereas the Legislative and Judicial Powers have recognized and aided, contrary to the laws and Constitutional provisions, General Victoriano Huerta and his illegal and anti-patriotic procedures, and

Whereas, finally, several Governors of the States of the Union have recognized the illegitimate government imposed by a part of the army which committed the treason ordered by the same General Huerta, notwithstanding having violated the sovereignty of those same States, whose governors should be the first to disown it, we, the undersigned, Chiefs and Officers in command of Constitutionalist forces, have agreed to and will maintain with arms the following:

368 Plan.

1. General Victoriano Huerta is repudiated as President of the Republic.

2. The Legislative and Judicial Powers of the Federation are also repudiated.

3. The Governors of the States who still recognize the Federal Powers which form the present Administration, thirty days after the publication of this Plan, are repudiated.

4. For the organization of the army charged with the fulfillment of our purposes, we appoint as First Chief of the Army which shall

1850

be called "Constitutionalist," the citizen Venustiano Carranza, Governor of the State of Coahuila.

5. Upon the occupation by the Constitutionalist Army of the City of Mexico, the citizen Venustiano Carranza, or whoever may have substituted him in command, shall assume charge ad interim of the Executive Power.

6. The President ad interim of the Republic shall convoke general elections as soon as peace shall have been established, delivering the Power to the citizen who may have been elected.

7. The citizen acting as First Chief of the Constitutionalist Army in the States whose Governments have recognized that of Huerta, shall assume the office of Provisional Governor and shall convoke local elections, after the citizens who may have been elected to fill the high Powers of the Federation, as provided for in the foregoing article, have taken possession of their offices.

Signed at the Estate of Guadalupe, Coahuila, on the 26th day of March, 1913. J. Treviño, Lieutenant Colonel, Chief of the General Staff; Lucio Blanco, Lieutenant Colonel of the 1st Regiment "Libres-del Norte" (Volunteers of the North); Francisco Sánchez Her-
369 rera, Lieutenant Colonel of the 2nd Regiment "Libres del Norte;" Agustín Milton, Lieutenant Colonel of the 28th Regiment; Cayetano Ramos, Major, Chief of the "Carbineers of Coahuila;" Alfredo Ricaut, Major of the "Morelos" Regiment; Pedro Vázquez, Major of the 1st Regional Corps; Major Juan Castro; Surgeon Major, Dr. Ríos Zertuche; Major Aldo Raroni, Chief of the Guard; Lieutenant Colonel Césareo Castro, 1st Regional Corps; Lieutenant Colonel A. Hortes; Major Alberto Palacios; Santos Dávila Arizpe, Captain of the First Grade; Ramón Caracas, Captain of the First Grade; S. Garza Linares, Captain of the First Grade; Felipe Menchaca, Captain of the First Grade; Alfredo Breceda, Captain of the First Grade; Guadalupe Sánchez, Captain of the First Grade; Gustavo Elizondo, Captain of the First Grade; F. Méndez Castro, Captain of the First Grade; T. J. Múgica, Captain of the First Grade; T. Cantú, Captain of the First Grade; Dr. E. M. Rofaldana Galvan, Captain of the First Grade; Nemesio Calvillo, Captain of the Second Grade; Armando Garza Linares, Captain of the Second Grade; Canuto Fernandez, Captain of the Second Grade; Juan Francisco Gutiérrez, Captain of the Second Grade; Manuel Charles; Captain of the Second Grade; Rómulo Zertuche, Captain of the Second Grade; Lieutenant H. T. Pérez; Lieutenant Antonio Villa; Carlos Oxéna, Captain of the Second Grade; Lieutenant Manuel M. Gonzalez; José Cabrera, Captain of the Second Grade; Lieutenant B. Blanco; Lieutenant Jesús R. Cantú; Lieutenant Jose de la Garza; Lieutenant Francisco A. Flores; Lieutenant Jesús Gonzalez Morín; Lieutenant José E. Castro; Lieutenant Alejandro Garza; Lieutenant F. J. Destenave; Lieutenant José N. Gómez; Lieutenant Pedro A. López; Lieutenant Balta-
370 zar M. Gonzales; Lieutenant Benjamín Garza; Lieutenant Genovio León; Lieutenant Venancio López; Lieutenant Petronilo A. López; Lieutenant Ruperto Boone; Lieutenant Ramón J. Pérez; Lieutenant Lucio Davila; Sublieutenant Alvaro Rabago; Sublieutenant Luis Reyes; Sublieutenant Luz Menchaca; Sublieutenant

Rafael Limón; Sublieutenant Reyes Castañeda; Sublieutenant Francisco Ibar; Sublieutenant Francisco Aguierre; Sublieutenant Pablo Aguilar; Sublieutenant A. Cantú; Sublieutenant A. Torres; Sublieutenant A. Amezcua; Sublieutenant Luis Martínez; Sublieutenant Salomé Hernandez.

We, the undersigned, adhere to and second in all its parts the Plan signed in the Estate of Guadalupe, Coah., on the 26th instant.

Piedras Negras, Coah.,

March 27, 1913.

Gabriel Calzada, Chief of the Troops; A. Barrera, Chief of the Troops of Allende; Major R. E. Múquiz, Chief of the Carbineer Corps of Rio Grande; Major Dolores Torres, Major of the Corps of A. del D. de Río Grande; Manuel B. Botello, Captain of the First Grade; I. Zamarripa, Captain of the Second Grade; Julian Cardenas, Captain of the Second Grade; Feliciano Mendoza, Captain of the First Grade of the Battalion "Loyals of Coahuila;" Lieutenant J. Flores Santos; Lieutenant Adolfo Treviño; Sublieutenant Juan G. Gonzalez; Federico Garduño, Captain of the Second Grade; Sublieutenant A. Lozano Treviño.

The Chiefs and Officers in the field of operations of Monclova adhere to and second the Plan signed yesterday in the Estate of Guadalupe. Major Teodoro Elizondo; Ramón Arévalo, Captain of the First Grade; Francisco Garza Linares, Captain of the Second Grade; F. G. Galarza, Captain of the Second Grade; Miguel Ruiz, Captain of the Second Grade.

371 EXHIBIT D-2.

Carranza decree in Spanish.

EXHIBIT D-2-*a*.

(Translation of Ex. D-2.)

There is a seal which says: Constitutionalist Army.—First Chief.

Decree No. 10.

I, Venustiano Carranza, First Chief of the Constitutionalist Army, considering that the greater part of the national territory is found under the control of the forces under my command, and that for this reason it is necessary to organize the cabinet in all the branches of Public Administration, I have resolved upon the creation of eight secretaryships attached to the Office under my charge, in the following manner:

Article 1. There shall be eight Secretaryships of State for the dispatch of administrative business with the following powers:

Secretaryship of Foreign Relations.

There shall correspond to this Secretaryship:
Relations with the foreign nations.
International treaties.
Preservation of said treaties. Originals of all the diplomatic documents and of the geographical charts on which are fixed the boundaries of the Republic.
Legations and Consulates.
Naturalization and statistics of aliens; rights of aliens.
Extraditions.
Authentication of signatures on documents which are to produce their effects in foreign countries, and on documents from foreign countries which are to cause effects in the Republic.
372 Appointments and resignations of the Secretaries of the Cabinet.
Great Seal of the Nation.
General Records.
Ceremonial.

Secretaryship of Government.

There shall correspond to this Secretaryship:
Constitutional reforms.
General elections.
Rights of men and of the citizen.
Liberty of worship and supervision of this branch.
Rural Police of the Federation.
Public health.
Labor.
Amnesties.
Territorial division and boundaries of the State.
Relations with the States.
National guard of the District and Territories.
Government of the Federal District and Territories in everything political and administrative, such as local elections, municipal police, Civil Registry, public charity, hospitals, charitable institutions, schools for the blind and for deaf mutes, homes for foundlings and asylums, public pawn shops, savings banks, lotteries, penitentiaries, jails, prisons and houses of correction.
National holidays.
Official Journal and Government printing office.

Secretaryship of Justice.

There shall correspond to this Secretaryship:
Circuit Tribunals and District Courts.
Condemnation for public utilities.
Pardons and commutation of sentences for offenses over which the Federal Courts have jurisdiction and for those against the common order in the District and Territories.

373 Relations with the Tribunals and Courts of the Federal District and Territories.
Public Ministry.
Notaries and Business Agents.
Criminal statistics.

Secretaryship of Public Instruction and Fine Arts.

There shall correspond to this Secretaryship:
Primary, normal, preparatory and professional instruction in the District and in the Federal Territories.
Schools of Fine Arts, of Music and Declamation, of Arts and Trades, of Commerce and Administration and other establishments of public instruction which may hereafter be created in the District and in Federal Territories.
Scientific Academies and Societies.
National Pathological Institute and the other national institutions of instructive character.
Literary, dramatic and artistic property.
National Libraries, Museums and Antiquities.
Archeological and Historical Monuments.
Administration of theatres which depend on the Federal Government, and the encouragement of refined exhibitions.
Encouragement of arts and sciences. Exhibition of works of art. Scientific and artistic congresses.

Secretaryship of Development (Fomento).

There shall correspond to this Secretaryship:
Agriculture and the establishment of instruction in the branch.
Waste lands.
Colonization.
Mines and mining.
Mercantile and industrial property.
Exclusive privileges.
374 Weights and measures.
Geographical, meteriological and astronomical operations.
Observatories.
Cartography, journeys, scientific explorations.
Agricultural, mining, industrial and manufacturing expositions.
General statistics.

Secretaryship of Communications and Public Works.

There shall correspond to this Secretaryship:
Interior postal service.
Maritime ways of communication.
Universal Postal Union.
Telegraphs.
Telephones.
Railroads.

Harbor works.
Lighthouses.
Public monuments and works of utility and ornamentation.
Highways, roads, ports, rivers, bridges, lakes and canals.
Care of and work in the National and Chapultepec Palaces.
Drainage of the Valley of Mexico.

Secretaryship of the Treasury, Public Credit and Commerce.

There shall correspond to this Secretaryship:
Federal imposts.
Maritime and frontier customs houses.
Administration of all the Federal revenues.
Fiscal police.
Commerce.
Exchanges and brokers.
Mints and assayers' offices.
Loans and public debt.
375 Banks and other institutions of credit.
Administration of the Federal revenues.
General taxes and fiscal statistics.
Budgets.

Secretaryship of War and Navy.

There shall correspond to this Secretaryship:
Constitutionalist Army.
War and merchant marine.
National guard in the service of the Federation.
Military legislation.
Administration of military justice.
Military pardons.
Letters of marque.
Military college.
Nautical schools.
Military hospitals.
Forts, fortifications, barracks, arms and ammunition factories, arsenals, drydocks. Depots, military stores of the Federation.
Military colonies.

Art. 2. In the cases not specified in the preceding article, in those doubtful or extraordinary and in those which arise from the situation through which the country is passing, as First Chief of the Constitutionalist Army I shall decide, through the medium of the Secretaryship of Relations, to which Department corresponds the matter in question.

Art. 3. Each Secretaryship of the Cabinet shall forward to that of the Treasury its respective proposed budget at the proper time.

Given at -he Headquarters in Nogales, Sonora, on October 17, 1913.—The First Chief of the Constitutionalist Army, V. Carranza.

376 EXHIBIT D-3.

Decree of Carranza in Spanish.

EXHIBIT D-3-*a*.

(Translation of Exhibit D-3.)

There is a seal which says:—Constitutionalist Army.—First Chief.

I, Venustiano Carranza, First Chief of the Constitutionalist Army, to all the inhabitants of the Republic, make known:

That by virtue of the extraordinary powers with which I am invested, I have thought it well to decree the following:

Article 1. There is recognized to all the nationals and aliens, the right to claim the payment of the damages which they suffered during the revolution of 1910, i. e., during the period comprised between the 21st of November, 1910, and the 31st of May, 1911.

Art. 2. Equal right is recognized to the nationals and aliens, to claim the damages which they have suffered and which they are continuing to suffer during the present struggle, i. e., from the 19th of February of the current year, until the restoration of constitutional order.

Art. 3. The same right is recognized in the aliens to claim the payment of the damages suffered, through revolutionary forces of armed bands, during the period comprised between the 31st of May, 1911, and the 19th of February of the current year.

Art. 4. As soon as the First Chief of the Constitutionalist Army, upon his arrival at the Capital of the Republic and in accordance with the Plan de Guadalupe, he assumes the Executive Power, he will appoint a commission of Mexican citizens, which shall
377 have charge of receiving, consulting and liquidating the amount of the claims, for the damages suffered in the periods fixed by Article 1 and 2 of this decree, that may be presented.

Art. 5. At the same time that the commission mentioned in the foregoing article is appointed, the First Chief of the Constitutionalist Army, in accord with the diplomatic or special representative commissioned by each government to which the alien claimants may belong, will proceed to appoint a mixed commission, composed of an equal number of Mexicans and aliens, these latter belonging to the same nationality of the claimants, so that they shall have charge of receiving, consulting and liquidating the claims which are presented, in accordance with the provisions of the first three articles of this decree.

Art. 6. The form, places, terms and conditions with which the claims for damages which are presented should be paid, as well as the organization, procedure and other provisions of essentials and forms to which the commissions should be subject shall be fixed by a special law passed at the proper time.

Therefore, I command that it be printed, published, circulated and that it be given due obedience.

Given at the Headquarters of the City of Monclova, on the tenth day of the month of May, nineteen hundred and thirteen.—The First Chief of the Constitutionalist Army, V. Carranza.—(Rubric.)

378 EXHIBIT D-4.

Document in Spanish.

EXHIBIT D-4-*a*.

(Transcript of D-4.)

Finnigan-Brown Company to General Francisco Villa, Dr.

I sell as follows for cash, and these presents are executed in the City of Juarez, on January 3, 1914, for the security of the purchaser.

4731 Cattle Hides
600 Calf Skins
123 Bundles of Goat Skins
15 Bundles of Bristles

Of the total value of $24,602.32 (Twenty-four thousand six hundred and two and 32/100 dollars) gold coin of the United States of America, which sum the seller has received in full payment.

For the Commander-in-Chief, Francisco Villa,

PABLO ALVAREZ,
Chief of General Staff.

(Seal Division of the Laguna Constitutionalist Army, Zaragoza Brigade. Office of the Secretary.)

This document bears no stamp for the reason that there is no stamp office in this town.

PABLO ALVAREZ,
Chief of the General Staff.

(Seal Division of the Laguna Constitutionalist Army, Zaragoza Brigade. Office of the Secretary.)

379 EXHIBIT D-8.

Contract, dated December 1, 1913, between Francisco Villa and Finnegan-Brown Co.,—in Spanish.

EXHIBIT D-9.

(Translation of Exhibit D-8.)

Constitutionalist Army.

Division of Leguna.

"Zaragoza" Brigade.

Secretary's Office.

No. —.

Contract of Purchase and Sale entered into between Mr. General Francisco Villa, Commander-in-chief of the Division of the North of the Constitutionalist Army, and Messrs. Finnigan-Brown Co., represented by their attorney, Mr. W. L. Field.

First. Mr. General Francisco Villa, in his character as Commander-in-chief of the Division of the North of the Constitutionalist Army, hereby sells to Messrs. Finnigan-Brown Co. all cattle-hides of animals belonging to the Constitutionalist Army, which are killed in the slaughter-houses of the State of Chihuahua.

Second. The conclusion of this contract shall be at the expiration of six months from the date of the signing of the present contract.

Third. The price of the hides sold, will be ten cents (United States currency) per gross pound.

Fourth. The hides shall be received in the slaughter-house at the moment the cattle *is* killed, by Agents authorized by the Buyer to issue the corresponding receipts to the Officer-in-charge of said slaughter-house, or the employee designated by Mr. General Villa or the Military Commander of that place.

380 Fifth. The payment shall be made for cash and in any of the Agencies of the Buyer, on the presentation of the receipt issued by his Agent in the place of discharge.

Sixth. If the Buyer's Agent does not appear to receive the cattle-hides on being killed, the seller is authorized to sell said hides to a third person.

Seventh. The Buyers are hereby exempted from the payment of exportation duties of the hides sold, as also of the importation duties on the salt which is necessary for the curing of said hides.

And for the corresponding legal purposes the present contract is signed in the City of Juarez, this first day of December, in the year nineteen hundred and thirteen, being witnesses, Messrs. Lic. Adrián Aguirre Bernavides, and Lorenzo Ortega, authorizing that two copies be issued, one for each party.

(Signed) FRANCISCO VILLA.
(Signed) ADRIAN AGUIRRE BENEVIDES.
(Signed) L. ORTEGA.

(Circular rubber seal: Division of the North. Commander-in-Chief.)

(Three Mexican Revenue Stamps of Twenty Cents Denomination.)

Exhibits D-10, D-11, D-12, D-13, D-14, D-15 are in Spanish.

381 EXHIBIT D-16.

President Wilson's Special Message to Congress, August 27, 1913.

"Gentlemen of the Congress: It is clearly my duty to lay before you, very fully and without reservation, the facts concerning our present relations with the Republic of Mexico. The deplorable posture of affairs in Mexico I need not describe, but I deem it my duty to speak very frankly of what this Government has done and should seek to do in fulfilment of its obligations to Mexico herself, as a friend and neighbor, and to American citizens whose lives and vital interests are daily affected by the distressing conditions which now obtain beyond our southern border.

"Those conditions touch us very nearly. Not merely because they lie at our very doors. That of course, makes us more vividly and more constantly conscious of them, and every instinct of neighborly interest and sympathy is aroused and quickened by them; but that is only one element in the determination of our duty. We are glad to call ourselves the friends of Mexico, and we shall, I hope, have many an occasion, in happier times as well as in these days of trouble and confusion, to show that our friendship is genuine and disinterested, capable of sacrifice, and every generous manifestation.

"The peace, prosperity, and contentment of Mexico mean more, much more, to us than merely an enlarged field for our commerce and enterprise. They mean an enlargement of the field of self-government and the realization of the hopes and rights of a nation with whose best aspirations, so long suppressed and disappointed, we deeply sympathize. We shall yet prove to the Mexican people
382 that we know how to serve them without first thinking how we shall serve ourselves.

"But we are not the only friends of Mexico. The whole world desires her peace and progress; and the whole world is interested as never before. Mexico lies at last where all the world looks on. Central America is about to be touched by the great routes of the world's trade and intercourse running free from ocean to ocean at the Isthmus. The future has much in store for Mexico, as for all the States of Central America; but the best gifts can come to her only if she be ready and free to receive them and to enjoy them honorably.

"America in particular—America north and south and upon both continents—waits upon the development of Mexico; and that development can be sound and lasting only if it be the product of a genuine freedom, a just and ordered Government founded upon law.

Only so can it be peaceful or fruitful of the benefits of peace. Mexico has a great and enviable future before her, if only she choose and attain the paths of honest constitutional government.

"The present circumstances of the Republic, I deeply regret to say, do not seem to promise even the foundations of such a peace. We have waited many months, months full of peril and anxiety, for the conditions there to improve, and they have not improved. They have grown worse, rather. The territory in some sort controlled by the provisional authorities at Mexico City has grown smaller, not larger. The prospects of the pacification of the country, even by arms, has seemed to grow more and more remote; and its pacification by the authorities at the capital is evidently impossible by any other means than force. Difficulties more and more entangle those who claim to constitute the legitimate government of the republic.
383 They have not made good their claim, in fact. Their successes in the field have proved only temporary. War and disorder, devastation and confusion, seem to threaten to become the settled fortune of the distracted country.

"As friends, we could wait no longer for a solution which every week seemed further away. It was our duty at least to volunteer our good offices—to offer to assist, if we might, in effecting some arrangement which would bring relief and peace and set up a universally acknowledged political authority there.

"Accordingly, I took the liberty of sending the Hon. John Lind, formerly Governor of Minnesota, as my personal spokesman and representative to the City of Mexico, with the following instructions:

"Press very earnestly upon the attention of those who are now exercising authority or wielding influence in Mexico the following considerations and advice:

"The Government of the United States does not feel at liberty any longer to stand inactively by while it becomes daily more and more evident that no real progress is being made toward the establishment of a Government at the City of Mexico which the country will obey and respect.

"The Government of the United States does not stand in the same case with the other great Governments of the world in respect of what is happening or what is likely to happen in Mexico. We offer our good offices, not only because of our genuine desire to play the part of a friend, but also because we are expected by the powers of the world to act as Mexico's nearest friend.

"We wish to act in these circumstances in the spirit of the most earnest and disinterested friendship. It is our purpose in
384 whatever we do or propose in this perplexing and distressing situation not only to pay the most scrupulous regard to the sovereignty and independence of Mexico—that we take as a matter of course to which we are bound by every obligation of right and honor—but also to give every possible evidence that we act in the interest of Mexico alone, and not in the interest of any person or body of persons who may have personal or property claims in Mexico which they may feel that they have the right to press.

"We are seeking to counsel Mexico for her own good and in the interest of her own peace, and not for any other purpose whatever. The Government of the United States would deem itself discredited if it had any selfish or ulterior purpose in transactions where the peace, happiness and prosperity of a whole people are involved. It is acting as its friendship for Mexico, not as any selfish interest, dictates.

"The present situation in Mexico is incompatible with the fulfillment of international obligations on the part of Mexico, with the civilized development of Mexico herself, and with the maintenance of tolerable political and economic conditions in Central America. It is upon no common occasion, therefore, that the United States offers her counsel and assistance. All America cries out for a settlement.

"A satisfactory settlement seems to us to be conditioned on—

"(*a*) Immediate cessation of fighting throughout Mexico, a definite armistice solemnly entered into and scrupulously observed;

"(*b*) Security given for an early and free election in which all will agree to take part;

"(*c*) The consent of Gen. Huerta to bind himself not to be
385 a candidate for election as President of the republic at this election; and

"(*d*) The agreement of all parties to abide by the results of the election and co-operate in the most loyal way in organizing and supporting the new Administration.

"The Government of the United States will be glad to play any part in this settlement or in its carrying out which it can play honorably and consistently with international right. It pledges itself to recognize and in every way possible and proper to assist the Administration chosen and set up in Mexico in the way and on the conditions suggested.

"Taking all the existing conditions into consideration, the Government of the United States can conceive of no reasons sufficient to justify those who are now attempting to shape the policy or exercise the authority of Mexico in declining the offices of friendship thus offered. Can Mexico give the world a satisfactory reason for rejecting our good offices? If Mexico can suggest any better way in which to show our friendship, serve the people of Mexico, and meet our international obligations, we are more than willing to consider the suggestion.

"Mr. Lind executed his delicate and difficult mission with singular tact, firmness, and good judgment, and made clear to the authorities at the City of Mexico not only the purpose of his visit but also the spirit in which it had been undertaken. But the proposals he submitted were rejected, in a note the full text of which I take the liberty of laying before you.

"I am led to believe that they were rejected partly because the authorities at Mexico City had been grossly misinformed and misled upon two points. They did not realize the spirit of the
386 American people in this matter, their earnest friendliness and yet sober determination that some just solution be found for the Mexican difficulties; and they did not believe that the present

Administration spoke, through Mr. Lind, for the people of the United States.

"The effect of this unfortunate misunderstanding on their part is to leave them singularly isolated, and without friends who can effectually aid them. So long as the misunderstanding continues we can only await the time of their awakening to a realization of the actual facts. We cannot thrust our good offices upon them. The situation must be given a little more time to work itself out in the new circumstances, and I believe that only a little while will be necessary.

"For the circumstances are new. The rejection of our friendship makes them new and will inevitably bring its own alterations in the whole aspect of affairs. The actual situation of the authorities at Mexico City will presently be revealed.

"Meanwhile, what is it our duty to do? Clearly, everything that we do must be rooted in patience and done with calm and disinterested deliberation. Impatience on our part would be childish, and would be fraught with every risk of wrong and folly. We can afford to exercise the self-restraint of a really great nation, which realizes its own strength and scorns to misuse it. It was our duty to offer our active assistance. It is now our duty to show what true neutrality will do to enable the people of Mexico to set their affairs in order again and wait for a further opportunity to offer our friendly counsels. The door is not closed against the resumption, either upon the initiative of Mexico or upon our own, of the effort to bring order out of the confusion by friendly co-operative
387 action, should fortunate occasion offer.

"While we wait, the contest of the rival forces will undoubtedly for a little while be sharper than ever, just because it will be plain that an end must be made of the existing situation, and that very promptly; and with the increased activity of the contending factions will come, it is to be feared, increased danger to the non-combatants in Mexico, as well as to those actually in the field of battle. The position of outsiders is always particularly trying and full of hazard where there is civil strife and a whole country is upset.

"We should earnestly urge all Americans to leave Mexico at once, and should assist them to get away in every way possible—not because we would mean to slacken in the least our efforts to safeguard their lives and their interests, but because it is imperative that they should take no unnecessary risks when it is physically possible for them to leave the country. We should let every one who assumes to exercise authority in any part of Mexico know in the most unequivocal way that we shall vigilantly watch the fortunes of those Americans who cannot get away and shall hold those responsible for their sufferings and losses to a definite reckoning. That can be and will be made plain beyond the possibility of a misunderstanding.

"For the rest, I deem it my duty to exercise the authority conferred upon me by the law of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any

assistance from this side the border. I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United
388 States to any part of the Republic of Mexico—a policy suggested by several interesting precedents and certainly dictated by many manifest considerations of practical expediency. We cannot in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them.

"I am happy to say that several of the great Governments of the world have given this Government their generous moral support in urging upon the provisional authorities at the City of Mexico the acceptance of our proffered good offices in the spirit in which they were made. We have not acted in this matter under the ordinary principles of international obligation. All the world expects us in such circumstances to act as Mexico's nearest friend and intimate adviser. This is our immemorial relation toward her. There is nowhere any serious question that we have the moral right in the case or that we are acting in the interest of a fair settlement and of good government, not for the promotion of some selfish interest of our own.

"If further notice were necessary than our own good will toward a sister republic and our own deep concern to see peace and order prevail in Central America, this consent of mankind to what we are attempting, this attitude of the great nations of the world toward what we may attempt in dealing with this distressed people at our doors, should make us feel the more solemnly bound to go to the utmost length of patience and forbearance in this painful and anxious business.

"The steady pressure of moral force will before many days break the barriers of pride and prejudice down, and we shall triumph as Mexico's friends sooner than we could triumph as her enemies—and how much more handsomely, with how much higher and finer satisfaction of conscience and of honor."

389 EXHIBIT D-17.

Extract from President Wilson's Annual Message to Congress, December 2, 1913, so Far as Relates to Mexican Affairs.

"There is but one cloud upon our horizon. That has shown itself in the south of us, and hangs over Mexico.

"There can be no certain prospect of peace in America until Gen. Huerta has surrendered his usurped authority in Mexico; until it is understood on all hands, indeed, that such pretended governments will not be countenanced or dealt with by the government of the United States.

"We are the friends of constitutional government in America; we are more than its friends; we are its champions; because in no other way can our neighbors, to whom we would wish in every way

to make proof of our friendship, work out their own development in peace and liberty.

"Mexico has no government. The attempt to maintain one at the City of Mexico has broken down, and a mere military despotism has been set up which has hardly more than the semblance of national authority. It originated in the usurpation of Victoriano Huerta, who, after a brief attempt to play the part of constitutional president, has at last cast aside the pretense of legal right and declared himself dictator.

"As a consequence, a condition of affairs now exists in Mexico which has made it doubtful whether even the most elementary and fundamental rights either of her own people or of the citizens of other countries resident within her territory can long be successfully safeguarded, and which threatens, if long continued, to imperil the interests of peace, order and tolerable life in the lands immediately to the south of us.

"Even if the usurper had succeeded in his purposes, in
390 despite of the constitution of the republic and the rights of its people, he would have set up nothing but a precarious and hateful power, which could have lasted but a little while, and whose eventual downfall would have left the country in a more deplorable condition than ever. But he has not succeeded.

"He has forfeited the respect and the moral support even of those who were at one time willing to see him succeed.

"Little by little he has been completely isolated. By a little every day his power and prestige are crumbling and the collapse is not far away.

"We shall not, I believe, be obliged to alter our policy of watchful waiting. And then, when the end comes, we shall hope to see constitutional order restored in distressed Mexico by the concert and energy of such of her leaders as prefer the liberty of their people to their own ambitions."

EXHIBIT D-18.

Proclamation of President Wilson, February 3, 1914.

A Proclamation.

Whereas, By a proclamation of the President, issued on March 14, 1912, under a joint resolution of Congress approved by the President on the same day, it was declared that there existed in Mexico conditions of domestic violence, which were promoted by the use of arms or munitions of war procured from the United States; and,

Whereas, By the joint resolution above mentioned it thereupon
became unlawful to export arms or munitions of war to
391 Mexico except under such limitations and exceptions as the President should prescribe;

Now, therefore, I, Woodrow Wilson, President of the United States of America, hereby declare and proclaim that, as the conditions on which the proclamation of March 14, 1912, was based

have essentially changed, and as it is desirable to place the United States with reference to the exportation of arms or munitions of war to Mexico in the same position as other powers, the said proclamation is hereby revoked.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 3rd day of February, in the year of our Lord, one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

WOODROW WILSON.

By the President,
[SEAL.] W. J. BRYAN,
Secretary of State.

392 EXHIBIT D-19.

President Wilson's Special Message to Congress, April 20, 1914.

GENTLEMEN OF THE CONGRESS: It is my duty to call your attention to a situation which has arisen in our dealings with Gen. Victoriano Huerta at Mexico City which calls for action, and to ask your advice and co-operation in acting upon it.

On the 9th of April a Paymaster of the U. S. S. Dolphin landed at the Iturbide bridge landing at Tampico with a whaleboat and boat's crew to take off certain supplies needed by his ship, and while engaged in loading the boat was arrested by an officer and squad of men of the army of Gen. Huerta. Neither the Paymaster nor any one of the boat's crew was armed. Two of the men were in the boat when the arrest took place, and were obliged to leave it and submit to be taken into custody, notwithstanding the fact that the boat carried, both at her bow and at her stern, the flag of the United States. The officer who made the arrest was proceeding up one of the streets of the town with his prisoners when met by an officer of higher authority, who ordered him to return to the landing and await orders, and within an hour and a half from the time of the arrest orders were received from the commander of the Huertista forces at Tampico for the release of the Paymaster and his men.

The release was followed by apologies from the commander, and later by an expression of regret by Gen. Huerta himself. Gen. Huerta urged that martial law obtained at the time at Tampico; that orders had been issued that no one should be allowed to land at the Iturbide bridge, and that our sailors had no right to land there. Our naval commanders at the port had not been notified of any such prohibition, and, even if they had been, the only
393 justifiable course open to the local authorities would have been to request the Paymaster and his crew to withdraw and to lodge a protest with the commanding officer of the fleet. Admiral Mayo regarded the arrest as so serious an affront that he was not

satisfied with the apologies offered, but demanded that the flag of the United States be saluted with special ceremony by the military commander of the port.

The incident cannot be regarded as a trivial one, especially as two of the men arrested were taken from the boat itself—that is to say, from the territory of the United States; but had it stood by itself, it might have been attributed to the ignorance or arrogance of a single officer.

Unfortunately, it was not an isolated case. A series of incidents have recently occurred which cannot but create the impression that the representatives of Gen. Huerta were willing to go out of their way to show disregard for the dignity and rights of this Government, and felt perfectly safe in doing what they pleased, making free to show in many ways their irritation and contempt.

A few days after the incident at Tampico an orderly from the U. S. S. Minnesota was arrested at Vera Cruz while ashore in uniform to obtain the ship's mail, and was for a time thrown into jail. An official dispatch from this Government to its embassy at Mexico City was withheld by the authorities of the telegraphic service until peremptorily demanded by our Charge d'Affaires in person.

So far as I can learn, such wrongs and annoyances have been suffered to occur only against representatives of the United States. I have heard of no complaints from other Governments of similar treatment. Subsequent explanations and formal apologies
394 did not and could not alter the popular impression, which it is possible it had been the object of the Huertista authorities to create, that the Government of the United States was being singled out, and might be singled out with impunity, for slights and affronts in retaliation for its refusal to recognize the pretensions of Gen. Huerta to be regarded as the Constitutional Provisional President of the Republic of Mexico.

The manifest danger of such a situation was that such offenses might grow from bad to worse until something happened of so gross and intolerable a sort as to lead directly and inevitably to armed conflict. It was necessary that the apologies of Gen. Huerta and his representatives should go much further, that they should be such as to attract the attention of the whole population to their significance, and such as to impress upon Gen. Huerta himself the necessity of seeing to it that no further occasion for explanations and professed regrets should arise. I, therefore, felt it my duty to sustain Admiral Mayo in the whole of his demand and to insist that the flag of the United States should be saluted in such a way as to indicate a new spirit and attitude on the part of the Huertistas.

Such a salute Gen. Huerta has refused, and I have come to ask your approval and support in the course I now purpose to pursue.

This Government can, I earnestly hope, in no circumstances be forced into war with the people of Mexico. Mexico is torn by civil strife. If we are to accept the tests of its own Constitution, it has no Government. Gen. Huerta has set his power up in the City of Mexico, such as it is, without right and by methods for

which there can be no justification. Only part of the country is under his control.

395 If armed conflict should unhappily come as a result of his attitude of personal resentment toward this Government, we should be fighting only Gen. Huerta and those who adhere to him and give him their support, and our object would be only to restore to the people of the distracted republic the opportunity to set up again their own laws and their own Government.

But I earnestly hope that war is not now in question. I believe that I speak for the American people when I say that we do not desire to control in any degree the affairs of our sister republic. Our feeling for the people of Mexico is one of deep and genuine friendship, and everything that we have so far done or refrained from doing has proceeded from our desire to help them, not to hinder or embarrass them. We would not wish even to exercise the good offices of friendship without their welcome and consent.

The people of Mexico are entitled to settle their own domestic affairs in their own way, and we sincerely desire to respect their right. The present situation need have none of the grave complications of interference if we deal with it promptly, firmly, and wisely.

No doubt I could do what is necessary in the circumstances to enforce respect for our Government without recourse to the Congress, and yet not exceed my constitutional powers as President; but I do not wish to act in a matter possibly of so grave consequence except in close conference and co-operation with both the Senate and House. I, therefore, come to ask your approval that I should use the armed forces of the United States in such ways and to such an extent as may be necessary to obtain from Gen. Huerta and his adherents the fullest recognition of the rights and dignity of the United States, even amid the distressing conditions now

396 unhappily obtaining in Mexico.

There can in what we do be no thought of aggression or of selfish aggrandizement. We seek to maintain the dignity and authority of the United States only because we wish always to keep our great influence unimpaired for the uses of liberty, both in the United States and wherever else it may be employed for the benefit of mankind.

EXHIBIT D-20.

Resolution Passed by Congress April 21, 1914.

In view of the facts presented by the President of the United States in his address, delivered to the Congress in joint session the 20th day of April, 1914, in regard to certain affronts and indignities committed against the United States in Mexico, be it

Resolved, That the President is justified in the employment of the armed forces of the United States to enforce his demands for unequivocal amends for affronts and indignities committed against the United States; be it further

Resolved, That the United States disclaims any hostility to the Mexican people, or any purpose to make war upon them.

397 EXHIBIT D-21.

Letter from Mr. Lansing, Oct. 21, 1914.

Department of State,

Washington.

Oct. 21, 1914.

Mr. Henry F. Herbermann, Washington, D. C.

DEAR SIR: The Department has received your letter of October 19, 1914, in which certain information is requested for use in the trial of a suit in which your firm, that of O'Brien, Boardman & Platt, is representing one of the parties.

The Department notes your request that it address a letter to the Hudson County Circuit Court, but in view of the fact that this court has not requested the Department to furnish any information in the case to which you refer as pending before it, the Department does not consider that it would be justified in addressing the court regarding this case. However, the Department is advised by you orally, that in the event it sees fit not to address itself to the court, you will be pleased to have a communication addressed to you containing the information which you have asked that the court be given. You have, furthermore, informed the Department orally that in view of the extreme urgency of your case, you prefer to receive a reply today, even though it may be incomplete, rather than to await such time as would be necessary for the Department to make that thorough examination of its records which alone would enable it to reply to your communication with an exact knowledge of what these records disclose with reference to all the matters which you bring forward.

Upon the above understanding, therefore, you are advised
398 that so far as the Department is at this moment able to state with regard, respectively to the several points you raise, as follows:

1. The Department is informed and believes that during the past year the authorities of the United States Army detained in Fort Bliss, Texas, and elsewhere, a considerable number of Mexican soldiers who had invaded the soil of the United States. It is the Department's understanding that the great majority, at least, of such soldiers were adherents of the Huerta administration, and the Department is not at this time in a position to state its information or belief on the question of whether any of such soldiers were partisans of the so-called Constitutionalists. In any event, it is suggested that this inquiry should more properly be addressed to the War Department. It might be said, however, with regard, at least, to many of

such Mexican soldiers, that they were so detained with the advice and consent of this Department.

2. The protocol of the proceedings had June 24, 1914, of the Conference held in Niagara Falls, Ontario, in consequence of the mediation offered by the Government of Argentina, Brazil and Chile, in the matters of difference existing between the United States and Mexico, a copy of which protocol has been furnished the Department, shows that on that date the Brazilian Ambassador stated in the Conference that, "To procure a direct meeting between the representatives of the Constitutionalist Party and the delegates of the Government of General Huerta, for the purpose of facilitating the organization of a provisional government in Mexico and the settlement of the internal questions which divide the two factions," the mediators had invited the Constitutionalist Party "through
399 its agency at Washington, to send such representatives for this purpose."

The Department does not understand that the United States Government was a party to such invitation to the Constitutionalists, nor that, in view of the nature of the mediation proceedings, it could properly have been such a party.

The Department has been unable thus far to ascertain what, if anything, is disclosed by its records relative to the statement referred to by you as having been made by Justice Lamar and Mr. Lehman on June 18, 1914.

4. George C. Carothers was appointed Consular Agent of the United States of America at Torreon, Mexico, on January 8, 1902, and since that time has performed various services for the Department, which services, during the past few months, have kept him in active touch with certain of the leaders of the so-called Constitutionalists.

I am, Sir,

Your obedient servant,

ROBERT LANSING.
Acting Secretary of State.

400-06 EXHIBIT D-22.

Supplementary Letter from Mr. Lansing, Oct. 21, 1914.

Department of State.

Washington.

October 21, 1914.

Mr. Henry F. Hebermann, Washington, D. C.

DEAR SIR: Supplementing the Department's letter to you of to-day, you are informed that information, which has been obtained from the Department's files since that letter was written, indicates that among the Mexican soldiers which were detained during the

past year by United States Army authorities, there were several soldiers of the so-called Constitutionalist forces.

I am, Sir.

Your obedient servant, ROBERT LANSING,
Acting Secretary of State.

407 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Circuit Court in and for the County of Hudson, in the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry A. Oetjen (intervening with James L. O'Neill) plaintiff, and Central Leather Company and Erie Railroad Company, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission or authority; a manifest error hath happened to the great damage of the said Henry A. Oetjen, plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein
408-09 given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the eighth day of August, in the year of our Lord one thousand nine hundred and sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by:
MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

(Writs of error identical in each case.)

410 (*Return.*)

The answer of the Judges of the Circuit Court in and for the County of Hudson, within named.

The record and proceedings of the place whereof mentioned is within named, with all things concerning the same, to the Supreme Court of the United States within specified, at the day — place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

LUTHER A. CAMPBELL, [L. S.]
Circuit Court Judge.

Attest:

——— ———,
County Clerk.

(Identical in each case.)

411 UNITED STATES OF AMERICA, *ss:*

To Central Leather Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court in and for the County of Hudson in the State of New Jersey, wherein Henry A. Oetjen (intervening with James L. O'Neill) is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this eighth day of August, in the year of our Lord one thousand nine hundred and sixteen.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

Service acknowledged by

FRANK H. PLATT, ESQ.,
For Defendant in Error.

(Identical citation issued & served in each of these two cases.)

412 Supreme Court of the United States.

HENRY A. OETJEN (Intervening with JAMES L. O'NEILL), Plaintiff, Plaintiff in Error,

vs.

CENTRAL LEATHER COMPANY and PENNSYLVANIA RAILROAD COMPANY, Defendants, Defendants in Error.

Assignments of Error.

And now comes Henry A. Oetjen, plaintiff in error, and makes and files this his assignments of error.

1. The Circuit Court of the County of Hudson (New Jersey) erred in directing a verdict for the defendant Central Leather Company and against the plaintiff Henry A. Oetjen, and entering judgment thereon in favor of said defendant and against said plaintiff.

2. Said Circuit Court erred in denying the motion of said plaintiff for the direction of a verdict against said defendant and for judgment thereon.

3. The Court of Errors and Appeals of the State of New Jersey erred in affirming the aforesaid judgment of the said Circuit Court.

4. Said Circuit Court erred in admitting evidence tending to show political conditions, the political organization and military conduct of Venustiano Carranza and Francisco Villa, and their associates, in the Republic of Mexico and a state of warfare therein, over the objection of the plaintiff that such facts could only be shown by the action of the political department of the Government of the United States.

413 5. Said Circuit Court erred in denying plaintiff's motion to strike out such evidence (pursuant to a reservation of right to make such motion).

6. Said Circuit Court erred in admitting, during the trial of said action, and in refusing to strike out at the conclusion thereof, pursuant to a privilege duly reserved, evidence tending to show the sovereignty and existence of a government de jure and de facto, in the Republic of Mexico, headed by said Carranza, in association with said Villa, over the objection of said plaintiff that such fact could be proved only by the action of the political department of the Government of the United States.

7. Said Circuit Court erred in admitting, during the trial of said action, and in refusing to strike out at the conclusion thereof, pursuant to a privilege duly reserved, evidence tending to show that said Carranza and Villa were belligerents, engaged in waging war against the government of Victoriano Huerta, in said Republic of Mexico, over the objection of said plaintiff that such fact could be proved only by the action of the political department of the Government of the United States.

8. Said Circuit Court erred in holding that a state of civil war existed in Mexico at the time involved in this suit, and that the po-

litical department of the United States has recognized such state of civil war therein and has recognized the belligerency of the contending forces, namely the Huertistas and the Constitutionalists, and has declared the position of the Government of the United States as to the belligerents to be one of neutrality.

414 9. Said Circuit Court erred in holding that the political department of the Government of the United States had recognized the belligerency of the so-called Constitutionalists.

10. Said Circuit Court erred in construing the official acts and utterances of the President of the United States, performed and uttered in the discharge of the duties of his office under the Constitution and laws of the United States, as constituting in fact and law a recognition by the United States of the belligerency of said Constitutionalists.

11. Said Circuit Court erred in holding that the provisions of the Hague Conventions (thereby referring to "Regulations respecting the laws and customs of war on land," which had theretofore been ratified and adopted by the Government of the United States, and by the Government of the Republic of Mexico, under the presidency of Porfirio Diaz, and which Conventions, among other things, prohibit the confiscation of private property) were not binding upon the so-called "Constitutionalists."

12. Said Court of Errors and Appeals, upon the appeal from the aforesaid judgment, erred in construing the official communications of the President to Congress as amounting to a recognition by the government of the United States that the Carranza and Villa forces at the time the hides in question were seized in November, 1913, and sold in January, 1914, were engaged in actual war.

13. Said Court of Errors and Appeals erred in basing its affirmance of the judgment of the Circuit Court upon the considera-

415 tion of evidence erroneously admitted as aforesaid, concerning the alleged organization of the Carranza government, under the so-called "Plan de Guadalupe," the exercise of de facto authority, the command of an army, and the alleged adoption of the regulations of the United States concerning the conduct of war.

14. Said Court of Errors and Appeals erred in affirming said judgment upon the ground that since the President of the United States had declared that "Mexico had no government," that in such case the only control resembling governmental authority must have been in the commanders of the armed forces in possession of the particular district or in the governments of the separate States of the Mexican Republic, notwithstanding the political department of the United States had not recognized any such governmental authority.

15. Said Court of Errors and Appeals erred in holding that in the absence of any government in Mexico, the rule by paramount force in any particular district is provable as a matter of fact by evidence.

16. Said Court of Errors and Appeals erred in holding that "the right to confiscate property * * * is one of the rights of the military occupant of a territory," notwithstanding the provisions of the Hague Convention.

17. Said Court of Errors and Appeals erred in holding: "The reason for permitting an armed force to levy contributions or even to

confiscate property in territory occupied by them, apply as
416-17 well to insurgents conducting war in a material sense as to recognized belligerents conducting war in a legal sense.

18. Said Court of Errors and Appeals erred in disregarding the provisions of the Hague Convention declared to be "Public International Law," by convention between the governments of the United States, the Republic of Mexico, and other American nations, at the Second Pan-American Conference of 1912, and contrary thereto holding that "the right to levy contributions is distinctly a conqueror's right and rests upon paramount force; it does not depend upon the recognition of belligerency with all that accompanies it, nor is its exercise limited to recognized belligerents; existing warfare and actual occupancy of the territory are the conditions necessary."

19. Said Court of Errors and Appeals erred in holding that: "In the present case the rules of war were complied with," notwithstanding the provisions of the Hague Convention to the contrary.

20. Said Court of Errors and Appeals erred in affirming the judgment of the Circuit Court instead of reversing said judgment and giving judgment in favor of the plaintiff Henry A. Oetjen, against defendants, or one of them, for Seven thousand four hundred and ninety-three dollars, ($7,493.), with interest thereon from January 22, 1914.

JAMES D. CARPENTER, JR.,
Attorney of Plaintiff in Error.

418 Supreme Court of the United States.

HENRY A. OETJEN (Intervening with James L. O'Neill), Plaintiff, Plaintiff-in-error,

vs.

CENTRAL LEATHER COMPANY and ERIE RAILROAD COMPANY, Defendants, Defendants-in-error.

Assignments of Error.

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2. Said Circuit Court erred in denying the motion of said plaintiff for the direction of a verdict against said defendant and for judgment thereon.

3. The Court of Errors and Appeals of the State of New Jersey erred in affirming the aforesaid judgment of the said Circuit Court.

4. Said Circuit Court erred in admitting evidence tending to show political conditions, the political organization and military

conduct of Venustiano Carranza and Francisco Villa, and
419 their associates, in the Republic of Mexico and a state of warfare therein, over the objection of the plaintiff that such facts could only be shown by the action of the political department of the Government of the United States.

5. Said Circuit Court erred in denying plaintiff's motion to strike out such evidence (pursuant to a reservation of right to make such motion).

6. Said Circuit Court erred in admitting, during the trial of said action, and in refusing to strike out at the conclusion thereof, pursuant to a privilege duly reserved, evidence tending to show the sovereignty and existence of a government de jure and de facto, in the Republic of Mexico, headed by said Carranza, in association with said Villa, over the objection of said plaintiff that such fact could be proved only by the action of the political department of the Government of the United States.

7. Said Circuit Court erred in admitting, during the trial of said action, and in refusing to strike out at the conclusion thereof, pursuant to a privilege duly reserved, evidence tending to show that said Carranza and Villa were belligerents, engaged in waging war against the government of Victoriano Huerta, in said Republic of Mexico over the objection of said plaintiff that such fact could be proved only by the action of the political department of the Government of the United States.

8. Said Circuit Court erred in holding that a state of civil
420 war existed in Mexico at the time involved in this suit, and that the political department of the United States has recognized such state of civil war therein and has recognized the belligerency of the contending forces, namely the Huertistas and the Constitutionalists, and has declared the position of the Government of the United States as to the belligerents to be one of neutrality.

9. Said Circuit Court erred in holding that the political department of the Government of the United States had recognized the belligerency of the so-called Constitutionalists.

10. Said Circuit Court erred in construing the official acts and utterances of the President of the United States, performed and uttered in the discharge of the duties of his office under the Constitution and laws of the United States, as constituting in fact and law a recognition by the United States of the belligerency of said Constitutionalists.

11. Said Circuit Court erred in holding that the provisions of the Hague Convention (thereby referring to "Regulations respecting the laws and customs of war on land," which had theretofore been ratified and adopted by the Government of the United States, and by the Government of the Republic of Mexico, under the presidency of Porfirio Diaz, and which Conventions, among other things, prohibit the confiscation of private property) were not binding upon the so-called "Constitutionalists."

12. Said Court of Errors and Appeals, upon the appeal from the aforesaid judgment, erred in construing the official communications of the President to Congress as amounting to a recognition

421 by the government of the United States that the Carranza and Villa forces at the time the hides in question were seized in November, 1913, and sold in January, 1914, were engaged in actual war.

13. Said Court of Errors and Appeals erred in basing its affirmance of the judgment of the Circuit Court upon the consideration of evidence erroneously admitted as aforesaid, concerning the alleged organization of the Carranza government, under the so-called "Plan de Guadelupe," the exercise of de facto authority, the command of an army, and the alleged adoption of the regulations of the United States concerning the conduct of war.

14. Said Court of Errors and Appeals erred in affirming said judgment upon the ground that since the President of the United States had declared that "Mexico has no government," that in such case the only control resembling governmental authority must have been in the Commanders of the armed forces in possession of the particular district or in the governments of the separate States of the Mexican Republic, notwithstanding the political department of the United States had not recognized any such governmental authority.

15. Said Court of Errors and Appeals erred in holding that in the absence of any government in Mexico, the rule by paramount force in any particular district is provable as a matter of fact by evidence.

16. Said Court of Errors and Appeals erred in holding
422 that "the right to confiscate property * * * is one of the rights of the military occupant of a territory," notwithstanding the provisions of the Hague Convention.

17. Said Court of Errors and Appeals erred in holding: "The reason for permitting an armed force to levy contributions or even to confiscate property in territory occupied by them, apply as well to insurgents conducting war in a material sense as to recognized belligerents conducting war in a legal sense."

18. Said Court of Errors and Appeals erred in disregarding the provisions of the Hague Convention declared to be "Public International Law," by convention between the governments of the United States, the Republic of Mexico, and other American nations, at the Second Pan-American Conference of 1912, and contrary thereto holding that "the right to levy contributions is distinctly a conqueror's right and rests upon paramount force; it does not depend upon the recognition of belligerency with all that accompanies it, nor is its exercise limited to recognized belligerents; existing warfare and actual occupancy of the territory are the conditions necessary."

19. Said Court of Errors and Appeals erred in holding that: "In the present case the rules of war were complied with," notwithstanding the provisions of the Hague Convention to the contrary.

20. Said Court of Errors and Appeals erred in affirming the judgment of the Hudson County Circuit Court instead of revers-
423–24 ing said judgment and giving judgment in favor of the plaintiff Henry A. Oetjen, against defendants, or one of

them, for Eleven thousand and ten dollars and eighty-three cents ($11,010.83), with interest thereon from January 22, 1914.

JAMES D. CARPENTER, JR.,
Attorney of Plaintiff-in-error.

425 New Jersey Court of Errors and Appeals, March Term, 1915.

No. 51.

JAMES L. O'NEILL and HENRY A. OETJEN, Appellants,

vs.

CENTRAL LEATHER CO. and PENNSYLVANIA R. R. CO., Respondents.

Argued March 16th-17th, 1915; Decided June 14th, 1915.

1. The official communications by the President to Congress leave no doubt or room for a contrary inference that in November, 1913, and January, 1914, the Carranza and Villa forces in Mexico were recognized by our government as engaged in actual war.

2. The right of the commander of an army in actual possession of a large territory, who observes the ordinary laws of war, to seize private property to meet his military necessities, does not depend on the existence of belligerency in the technical sense, but on the existence of belligerency in the sense of actually existing warfare.

3. The right of a military commander to levy contributions must be exercised in accordance with the laws of war. Contributions must be levied by the commander-in-chief or by the general of a corps acting independently.

4. By agreement between General Villa, whose forces were in actual possession of the district in Mexico, and the citizens, a war contribution was assessed by commissions appointed by the taxpayers; one who was assessed failed to pay and property belonging to him was seized by virtue of a general order and sold: Held that the title passed by that sale is not open to inquiry in our courts.

Appeal from Hudson Circuit.

John M. Enright and Oscar R. Houston (of New York) for Plaintiff-, Appellants.

Morgan J. O'Brien (of New York) (William D. Edwards with him) for Defendants, Respondents.

426 The opinion of the court was delivered by

SWAYZE, *J.:*

The question to be decided is the title to certain hides claimed by the plaintiff under Martinez, the former owner, and by the defendant Central Leather Company under a title based on a seizure in Mexico by military forces under the authority of General Villa.

1. In cases of this kind the courts are bound to follow the action of the political branches of the Federal government where there has been such action. Jones vs. United States, 137 U. S. 202. Our first question is therefore what action has been taken by the Federal Government. We are informed of this by various documents submitted in evidence. The letter from Mr. Lansing, counselor to the Department of State written for the Secretary of State under date of August 20, 1914, makes it clear that our government has never recognized any government in Mexico headed by Carranza or Villa and has never recognized as belligerents within the intent and meaning of the law of nations any forces operating in Mexico under their command. This explicit declaration of Mr. Lansing acting officially settles that question as far as this court is concerned and leaves nothing to inference.

When we examine further to determine what is the exact position taken by your government with reference to the forces under the command of Carranza as Chief and the immediate command of Villa, we find no such explicit declaration, but the official communications by the President to Congress leave no doubt or room for a contrary inference that at the time the hides in question were seized in November, 1913, and sold in January 1914, the Carranza and
427 Villa forces were recognized by our government as engaged in actual war. In a message to Congress on August 27, 1913, the President stated his efforts to secure the abdication of the Huerta government, and said that the territory "in some sort controlled by the provisional authorities at Mexico City (the Huerta government) has grown smaller not larger"; that "difficulties more and more entangle those who claim to constitute the legitimate government" a "claim they have not made good in fact." He states that he has suggested a settlement conditioned on immediate cessation of fighting throughout Mexico, a definite armistice solemnly entered into and scrupulously observed; security for an early and free election in which all will agree to take part; the agreement of all parties to abide the result of the election and to co-operate in organizing and supporting the new administration. These references to a cessation of fighting and definite armistice obviously recognize that fighting is going on and that it is of such a character that it may be stopped by an armistice, a word appropriate only to a condition of warfare. "An armistice suspends military operations by mutual agreement of the belligerent parties" Article 36 of the Hague Convention of 1907 as to Regulations Concerning the Laws and Customs of Land Warfare. It is a word that cannot properly be applied to agreements between a government on the one side and rioters,

brigands, or banditti on the other. The message of the President moreover contemplated an agreement between parties who had the power to secure the scrupulous observance of agreements solemnly entered into and of an agreement to abide the result of an
428 election. If there could be any doubt that the President thereby recognized that the armed forces in Mexico were divided into parties who could command the obedience of their members and that their armed struggle was war, that doubt would be removed by his further declaration that it is our duty to show what true neutrality will do to enable the people of Mexico to set their affairs in order again. Neutrality is a word not properly applicable except as between armed forces engaged in war which our government desires to treat on a plane of absolute equality. The necessary inference to be drawn from the use of the word neutrality is confirmed by subsequent language in the message. The President speaks of increased danger to non-combatants in Mexico as well as to those actually in the field of battle and says that he deems it his duty "to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side of the border"; he refers to the "best practice of nations in the matter of neutrality." The evidence proves that this recognition by the President of a state of war between the Huerta government and the Carranza government was merely a recognition of existing facts. Prof. Beale defines war as follows (9 Harvard Law Review): "War, in law, is not a mere contest of physical force, on however large a scale. It must be an armed struggle, carried on between two political bodies, each of which exercises de facto authority over persons within a determinate territory, and commands an army which is prepared to observe the ordinary laws of war."

That the struggle in Mexico in 1913-1914 was an armed struggle is well known; that it was carried on between two political bodies, one the Huerta government claiming to be the legitimate successor
429 of the formerly existing Mexican government, and the other the Carranza government organized under the so-called Plan of Guadelupe, is proved; that each exercised de facto authority over persons within a determinate territory and commanded an army is proved; that the Carranza forces at least were prepared to observe the ordinary laws of war is shown by their adoption of our own regulations.

Our government has however gone further than merely to recognize that the two contending parties were at war. On December 2, 1913, the President in his annual message spoke of Huerta's authority as usurped and said there could be no lasting peace until he surrendered it. If Huerta's authority was usurped, if peace was impossible until he surrendered, armed resistence to that authority was justified. The President added the most important declaration "Mexico has no government." In that situation the only control resembling governmental authority must have been in the commanders of the armed forces in possession of the particular district or in the governments of the separate states of the Mexican Republic. In fact the

state of Chihuahua, having twice the area of the state of New York, and a large part of the state of Coahuila, were under the control of Carranza and Villa at the time the hides in question were there seized and sold, the municipal government of Torreon favorable to them had been restored after Villa's capture of the city, and Martinez, a Huerta supporter, was in hiding and subsequently fled.

2. The next question is whether the commander of an army in actual possession of a large territory who observes the ordinary laws of war, has the right, according to those laws, to seize private property to meet his military necessities. We need not go so far
430 as to consider whether in the absence of government in Mexico as the President has decided, a military government under such circumstances would be entitled to be considered a de facto government so as to deprive us of any right to question its acts as to the property of Mexicans within the Mexican territory controlled by it. American Banana Co. vs. United Fruit Co. 213 U. S. 347. We need only inquire into the rights of parties to a war under the laws that govern that situation. These rights do not depend on the existence of belligerency in the technical sense, but on the existence of belligerency in the sense of actually existing warfare. The distinction was pointed out by President Cleveland in his first and seventh annual messages, 9 Harvard Law Review 406, and by the United States Supreme Court in The Three Friends, 166 U. S. 1, 63-64. Belligerency in the strict technical sense, that is belligerency recognized by another power, involves such serious disadvantages to recognizing power, such as the right of blockade by either belligerent, the right of visitation, search, and seizure of contraband on the high seas, abandonment of claims for reparation on account of damages suffered by citizens of the recognizing power, that recognition depends not merely on the actual fact of existing war, but on the policy of other powers and the necessity of recognition of belligerency by them. But there may be a recognition of a condition of political revolt, a situation between recognition of the existence of war in a material sense and of war in a legal sense. Such was the case of The Three Friends above cited in which our neutrality act was held applicable at the time of the insurrection in Cuba. The Court held that although never recognized even as belligerents, the insurgents were "a people" within the meaning
431 of the neutrality act, as the Attorney General put it in his brief, because they were a political organization, engaged in a political enterprise; it was those facts that saved the owners of The Three Friends from being pirates and subjected them only to the penalties of the neutrality Act. A similar recognition, if not more, has been accorded by the President to the Carranza-Villa forces, We are in duty bound under the declaration in his messages to Congress, to preserve neutrality; this cannot be done unless we accord to both parties alike all the rights permitted by the rules of war, and even if the Carranza-Villa forces were no more than insurgents, we should have to treat them like any other belligerent as to whom we desired to be entirely fair without subjecting ourselves to the inconveniences that would arise from a formal recog-

nition of belligerency. No such troubles can arise from acts done on Mexican soil and affecting Mexican property only. The courts of one country, says Chief Justice Fuller in Underhill vs. Hernandez, 168 U. S. 250 at page 252, will not sit in judgment on the acts of the government of another done within its own territory, and this principle is not confined to lawful or recognized governments, or to cases where redress can manifestly be had through public channels. "The immunity of individuals from suits brought in foreign tribunals for acts done within their own States, in the exercise of governmental authority, whether as civil officers or as military commanders, must necessarily extend to the agents of governments ruling by paramount force as matter of fact." In the absence of any government in Mexico, a fact as to which
432 the President's statement is conclusive upon us, the rule by paramount force in any particular district, is provable as matter of fact by evidence, which in this case is neither left in doubt nor subject to possible inference to the contrary. Warfare has been recognized by the President as existing, and although he has not officially determined in what particular territory or at what particular time Carranza and Villa were in control, he has said in public messages to Congress that only part of Mexico was under Huerta's control and that has grown smaller not larger. He has thus left it open, in fact made it necessary, for the courts in a proper case to determine whether a particular territory was in control of one party or the other. The action in Underhill vs. Hernandez was an action for personal torts, but we are equally bound by the same legal principle in an action involving the title to personal property if title thereto can ever be passed by a military commander exercising paramount force. That title can be so passed is well settled, since the right to confiscate property or levy military contributions is one of the rights of the military occupant of a territory. The reason for permitting an armed force to levy contributions or even to confiscate property in territory occupied by them, apply as well to insurgents conducting war in a material sense as to recognized belligerents conducting war in a legal sense. The reason is the necessity of carrying on the usual operations of government and of supporting the army. As the old practice of private pillage was frowned on and discontinued, the milder and more effective system of requisitions, (a term sometimes
433 attributed to Washington), contributions and confiscations took its place. The advantage was that the latter were under the control of the military authorities and the burden was not only better distributed but the evils attending private pillage ceased; the inhabitants of the conquered territory suffered less and the conquerors gained more. Whether the practice is to be justified on ethical grounds is disputed by Bonfils (Droit International Public, sections 1218-1225) but is recognized by him as existing usage (sec. 1226) as it is by other text writers. Hall (5th ed.) 427 ff.; Wheaton (Atlay's ed.) 482 quoting Helleck; 7 Moore's International Law Digest, 280. The rule had the approval of the Hague Conference of 1907 in its effort to codify the rules of war. Articles 48 and 49.

It has had the approval of our government and of our acts in accordance therewith, 7 Moore's Int. Law Digest 285-286; and of the United States Supreme Court. Miller vs. United States, 11 Wallace 268, 304 ff. The question was directly involved in that case since unless the confiscation acts could be justified under the war power of the constitution, they would be void because in violation of the 5th amendment. After pointing out the right of confiscation under the rules of war as between independent nations, the court said that every reason for the allowance of a right to confiscate in case of foreign wars exists in full force when the war is domestic or civil, and referred to the Prize Cases, 2 Black 635. The latter are interesting because the right to condemn was asserted in favor of our government although it had not recognized the confederate states as belligerents. An excellent statement of
434 the rule and the reason by which it is justified is to be found in 15 Harvard Law Review 140-141.

The right to levy contributions is distinctly a conqueror's right and rests upon paramount force; it does not depend upon the recognition of belligerency with all that accompanies it, nor is its exercise limited to recognized belligerents; existing warfare and actual occupancy of the territory are the conditions necessary. Since the right exists under the laws of war, it must be exercised in accordance with those laws. It must not be confused with mere brigandage or looting. Contributions must be levied either by the commander-in-chief, or by the general of a corps acting independently. Hall 428-429; adopted by Moore, 7 Moore's Internal Law Digest 281. The rule is implied in the instructon for our army during the Civil War, 7 Moore 286. In the present case the rules of war were complied with. General Villa's forces were in actual possession of Torreon and the Laguna district. By agreement between him and the citizens a war contribution was assessed in the district by commissions appointed by the taxpayers. An assessment was made against Martinez who as a partisan of Huerta was then in hiding. He failed to pay and his name was included in a general order to seize the property of those who refused to pay their share of the contribution. In pursuance of that order these hides were seized, and sold by General Villa. The proceedings subsequently had the approval of Carranza. We think that sale passed a title not open to inquiry in our courts. The judgment is therefore affirmed with costs.

Endorsed: "Filed Jun- 14, 1915. Thomas F. Martin, Clerk."

(Remittitur duly entered and record remitted from Court of Errors & Appeals to Hudson Circuit Court, June 28, 1915.)

435–36 New Jersey Court of Errors and Appeals, March Term, 1915.

No. 52.

JAMES L. O'NEILL and HENRY A. OETJEN, Appellants,

vs.

CENTRAL LEATHER COMPANY and ERIE RAILROAD CO., Respondents.

Per CURIAM:

The judgment is affirmed for reasons stated in the opinion in No. 51 just delivered.

Endorsed: "Filed Jun- 14, 1915. Thomas F. Martin. Clerk."

(Remittitur duly entered and record actually remitted from C... of Errors & Appeals to Hudson Circuit Court, June 28, 1915.)

437 Supreme Court of the United States.

HENRY A. OETJEN, Plaintiff-in-error,

against

CENTRAL LEATHER COMPANY, Defendant-in-error.

Stipulation.

It is hereby stipulated between counsel for the respective parties, that the annexed Record as corrected and revisd, together with the annexed copies of Writ of Error, Citation and Assignments of Error, be printed for the use of this Court in place of the certified Record on file.

Dated, New York, July 19th, 1917.

JAMES D. CARPENTER, JR.,
Attorney for Plaintiff-in-error.
FRANK H. PLATT,
Attorneys for Defendant-in-Error.

Endorsed: File Nos. 25,497 & 25,498. Supreme Court U. S., October Term, 1917. Term Nos. 268 & 269. James L. O'Neill and Henry A. Oetjen, Appellants, vs. Central Leather Company et al. Agreed Record. Filed August 1, 1917.

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DEC 31 1917
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No. 268

Supreme Court of the United States

OCTOBER TERM, 1917

HENRY A. OETJEN

Plaintiff-in-Error

vs.

CENTRAL LEATHER COMPANY

Defendant-in-Error

In Error to Circuit Court of Hudson County, New Jersey —Nos. 268 269

BRIEF OF PLAINTIFF-IN-ERROR.

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—1917—

INDEX.

	Page.
Statement of facts	1
Questions involved	14
Errors relied on	15
Seizure examinable with reference to United States Law (Point I)	16
Question treated as though goods found in possession of Constitutionalists within the United States (Point II)	19
Seizure violated modern law of nations (Point III)	20
Recognition of Hague Conventions by Courts (Point IV)	26
Seizure neither a tax nor a contribution under Hague Conventions (Point V)	32
Jurisdiction of Court to inquire into legality of acts abroad when affecting property brought into United States (Point VI)	36
The Courts of United States should not give effect to sovereign acts committed abroad if they offend against the law of nations, as recognized by the United States (Point VII)	44
The law of nations does not require the Courts of the United States to recognize the title to private property lawfully acquired abroad where such recognition involves the sanction of practices opposed to the public policy of the United States (Point VIII)	46
The judgments against the plaintiff should be reversed and judgments directed to be entered in favor of the plaintiff for the stipulated value of the hides (Point IX)	47

LIST OF CASES REFERRED TO.

"Appam", The, 234 Fed. Rep., 389; 243 U. S., 124	26, 44
"Bangor", The, 32 T. L. R., 590	31

Page.

"Belgia", The, 31 T. L. R., 490 31
"Belgia", The, 32 T. L. R., 435 31
"Cassius", The, 3 Dallas, 121 39
"Chili", The, 31 T. L. R., 3 30
"Concodoro", The, 32 T. L. R., 465 31
Eastern Lunatic Asylum vs. Garrett, 27 Gratt., 163 22
"Germania", The, 32 T. L. R., 68 31
"Gutenfels", The, 32 T. L. R., 433 31
Hall's International Law, p. 157 .. 22, 23, 24, 32
Hilton vs. Guyot, 159 U. S., 113 41
International American Conference, Vol. 11, pp. 336, 337 25
Kent's Commentaries, Vol. 2, Star, pp. 248, 249 46
"Marquis Bacquehem", 32 T. L. R., 462 31
Miller vs. U. S., 11 Wallace, 268 26
Miller vs. The Ship "Resolution", 2 Dallas, 1 40
"Mowe", The, 31 T. L. R., 46; 84 L. J. P., 57 29
"Ophelia", The, 31 T. L. R., 452 30
"Ophelia", The, 32 T. L. R., 502 31
Oppenheim's International Law, Vol. 2, pp. 295, 296 45
Pennsylvania R. R. Co. vs. Clark Bros. Coal Co., 238 U. S., 456, 466-468 19
Planters Bank vs. Union Bank, 16 Wallace, 483 21
Prigg vs. Penn, 16 Peters, 539 46
"Prinz Adalbert", The, 32 T. L. R., 378 31
Rose vs. Himely, 4 Cranch., 241 36
Sabariego vs. Maverick, 124 U. S., 261 36
Santissima Trinidad", 7 Wheaton, 284 .... 38, 43
Scott's Hague Peace Conferences, Vol. 1, p. 761 25
Toscano, In re, 208 Fed. Rep., 938, ... 27
"Turbantia", The 32 T. L. R., 529 31
Underhill vs. Hernandez, 168 U. S., 250 42
U. S. vs. Klein, 80 U. S., 128 20
U. S. vs. Percheman, 7 Peters, 51 22

(25497, 25498)

Supreme Court of the United States

OCTOBER TERM, 1917.

HENRY A. OETJEN, *Plaintiff-in-Error,* *vs.* CENTRAL LEATHER COMPANY, *Defendant-in-Error.*	In Error to the Circuit Court of Hudson County, New Jersey. Nos. 268, 269.

BRIEF OF PLAINTIFF-IN-ERROR.

Statement of the Case.

The writs of error in above cases bring up two judgments given for the defendant by the Hudson County Circuit Court, New Jersey, in two actions of replevin brought by a citizen of the United States as the assignee of the Mexican owner of certain cattle hides originally located in Mexico, to recover the same from the possession of the defendant Central Leather Company, in New Jersey.

These hides were part of a cargo delivered to the defendant Central Leather Company in New York on or about January 19th, 1914, and in turn delivered by the Leather Company to the Erie Railroad Company and the Pennsylvania Railroad Company for shipment to different tanneries of the Leather Company.

The hides were seized by the Sheriff while in transit in Jersey City.

Although two separate suits were brought against the respective Railroad Companies the Central Leather Company was made defendant in each and assumed the entire burden of defense.

Both suits were tried together under a stipulation that the causes proceed and be tried and determined as a controversy against the Central Leather Company, without regard to the nominal defendants Pennsylvania Railroad Company and the Erie Railroad Company, and as though the goods were replevied from the sole possession of the Central Leather Company (p. 22).

The appellant Oetjen was admitted as a party plaintiff in each action and filed separate complaints, to which separate answers were filed.

Oetjen claims as assignee of the original Mexican owner M. M. Martinez & Company.

Defendant Leather Company seeks to justify as a purchaser through its subsidiary corporation known as Finnigan-Brown Company (a Texas corporation), from the Mexican revolutionary leader General Francisco Villa.

No dispute is now made that the hides in controversy were originally the lawful property of Martinez & Company, who were wholesale dealers in such products in Torreon, Mexico, at the time of the first capture of that city by the Villa forces in October, 1913. It is claimed, however, that the hides were seized by the so-called Constitutionalists and thereafter sold by General Villa to the Finnigan-Brown Company and that the act of the Villa forces in making the seizure was a legitimate act of war and legally sufficient to divest Martinez of his title and to confer a good title upon the purchaser.

The facts bearing upon the seizure in Mexico may be summarized as follows:

The United Mexican States is a republic existing under a Constitution adopted in 1857. The Republic is a federation of States, each with sovereign powers. Defendant's witness Zuberan, who is a Mexican lawyer, says:

> "It was exactly the same organization as that of the United States" (p. 67).

The Constitution, among other things, prohibits

> "excessive fines, confiscation of property or any other penalties unusual or working corruption of blood" (p. 168).

In February, 1913, Francisco Madero, the recognized President of the Republic, was killed and was succeeded by Victoriana Huerta, who assumed the title, office and duties of President of the Republic.

The political departments of the United States Government never recognized the validity of Huerta's succession, but undoubtedly recognized him as exercising de facto the powers of de facto government (Exs. D-16, D-17, D-19), throughout the time of the transactions in suit. At the time of the Huerta succession Venustiano Carranza was Governor of the Mexican State of Chihuahua, and with certain of his followers and with partisans of Madero from other sections fled from his capital at Saltilo and organized for an armed attack upon not only the Federal Government headed by Huerta, but against all the State governments which might refuse to repudiate the authority of Huerta as Federal President.

The Carranza followers organized by adopting the so-called Plan de Guadalupe, which defines the extent of their revolt (Ex. D-1-A, p. 185).

The Constitution of the republic is not either ex-

pressly or inferentially repudiated, but upon the contrary the signatories describe themselves as "Constitutionalists," and their army as the Constitutionalist Army.

Since the trial of this action and the argument of the appeals in the New Jersey Court of Errors and Appeals, the Revolution against the Huerta government has succeeded and the government headed by Carranza has been recognized by the government of the United States.

General Villa, who made the seizure in question, some time before the complete establishment of the Carranza government seceded with his followers from the Carranza organization and has ever since waged unsuccessful war against it.

General Villa and his forces were never recognized by the Government of the United States and are now proclaimed outlaws both by the Governments of the United States and Mexico.

The partnership of M. M. Martinez & Co. was long established at Torreon in the State of Coahuila, with a branch at Guadalajara, Martinez residing in and conducting the business at Torreon and his partner Canales residing at and conducting the business at Guadalajara. The firm did a large business and Martinez was known as a man of wealth and standing at Torreon. He held the municipal office of Commissioner of Street Cleaning in Torreon. This was merely a local office under appointment from the local Governor (p. 33). It was not in any sense a Federal office or an office held under the Huerta administration (p. 33).

When the Revolution broke out there were Federal garrisons in the State of Coahuila, including the City of Torreon, which was a rich commercial centre, and that State remained loyal.

In September, 1913, Martinez & Company had a valuable stock of hides, goat skins, calf skins and horse hair in their warehouse in Torreon. Reports came that the rebels were approaching the City.

Martinez thereupon arranged with the railroad to furnish four freight cars, into which he loaded the entire contents of his warehouse, and the local superintendent of the railroad promised to attach these cars to a passenger train which he expected to be able to send away from the City with refugees (pp. 24, 25).

In October the cars were moved as far as San Pedro, about forty miles away, where they were intercepted by a detachment of General Villa's army (p. 46).

On October 1st, 1913, soldiers commanded by General Villa captured the City.

Martinez, in common with other citizens, went into hiding. He was in fear of being arrested and shot, having been informed that he was on a list for that purpose (p. 35).

The soldiers broke into his warehouse, office and residence and looted them of all their contents (pp. 28, 29).

From his place of hiding he saw the soldiers carrying merchandise looted from the shops through the streets (p. 30). After five days Martinez escaped from the City on October 5th, disguised as a peon (p. 37). The soldiers were then assaulting the citizens.

Conditions in the City are sufficiently described by defendant's witness de la Garza, who was then a citizen of Torreon of Constitutionalist tendencies, and has since become a high official in the Constitutionalist Government.

Certainly his description, with every incentive to give respectability to the party which he now

represents, must be taken as stating conditions in their most favorable aspect.

He says:

> "In my house they knew me as a man of Constitutional ideas; some prominent people came into my house for shelter, and these people came to me asking me to see General Villa in order to avoid disorders in the City and to avoid all kinds of scandals.
>
> "Q. In other words, looting, is that it? A. Yes.
>
> "Q. Now, these people who came to your house in hiding or for protection, as you have said, were afraid that Villa's soldiers would loot their property, weren't they? A. Yes, they had great fears for their own lives, because they were Huerta sympathizers" (p. 92).
>
> "Q. So you were selected to go to General Villa and find out what terms could be made so that these people would be safe in their lives and property, isn't that so? A. My mission was only to see what General Villa's intentions and ideas were" (p. 93).
>
> " * * * I asked General Villa what was it he wanted, what did he desire. That is what I said to him.
>
> "Q. And what did General Villa say to you? A. That he wanted 5,000,000 pesos. * * * General Villa told me that he wanted 5,000,000 pesos and I answered him back that it was too much. He said he needed that money to capture all the northern part of Chihuahua, and he would return the money afterwards" (p. 93). * * *
>
> "General Villa told me that he wanted that money to capture all the northern part of the country, and that if he didn't get that money he would see a way that he would get it" (p. 93). * * *
>
> "Q. You understood that they were uncomfortable ways, didn't you? A. Yes, not very agreeable. The persons in the house were never threatened. * * * There were

> over $30,000,000 of merchandise stored away in warehouses at that time, and that is the reason he didn't pay much attention to the people. In the German Bank and the National Bank—in these banks the greater part of this money was deposited, and merchandise and cotton was also stored away there, and they were all respected, all this merchandise was respected" (p. 94). * * *

During the period of negotiations soldiers were stationed on guard in front of the banks and warehouses (p. 94).

The small number of bankers for whom de la Garza was originally acting then arranged for a meeting of about 100 taxpayers to be held in the Casino. Negotiations were then carried on between this informal assembly and General Villa, lasting about a week. During the negotiations Villa was making daily demands upon the banks, which they were forced to pay (p. 94).

> "At first Villa, his idea was to impose a military contribution; the citizens got together and said that they would prefer to spontaneously get this money together, and give it to him, and in exchange to give them complete guarantees, and to avoid loot and all kinds of depredations" (p. 81).

The informal assembly selected four committees to prepare lists of the persons whom they thought should contribute to the demand and the amounts which should be contributed by each. Each committee had a chairman and attended to the collection of the amounts assessed on their particular lists. The moneys as collected were paid into one of the banks to the credit of the Constitutionalist army and these moneys were checked out upon the signatures of two of the Generals and Mr. de la Garza, who seemed to have become the personal representative of General Villa.

All prosecutions were suspended during the time that these commissions were making their collections (p. 98).

The commissions then turned over to the military authorities their several lists showing who had paid and those who had not paid.

Orders were thereupon issued from the military headquarters to arrest those who had not paid and orders were given to dispose of their property, merchandise and other objects upon which money could be raised (p. 85).

The commander also tried to sell their real estate but nobody would buy it (p. 95).

It is said that the name of Manuel Martinez appeared on this list as not having paid the amount assessed.

Defendant's witness, however, apparently never noticed the amount alleged to have been allotted against Martinez and there is no evidence attempting to fix it even approximately (p. 97).

There is no evidence that Martinez participated in any way in the deliberations of the taxpayers or the formation of the committees or had any knowledge of the alleged assessment against him. On the contrary, it appears that he immediately went into hiding and escaped from the City on the fifth day of occupation. The lists were not turned in to the military officers until considerably later. Villa's soldiers were hunting for him "with great care for the same procedure that they did with the other Federals" (p. 96).

The evidence as to this alleged assessment by the Citizens' Committee against Martinez is vague and flimsy and it is quite evident that the measures taken against him were largely personal and not for the purpose of collecting the alleged assessment (pp. 96, 97).

The only testimony as to the actual seizure is as follows:

De la Garza transmitted a telegram from Villa, who was then in the country north of Torreon, addressed to Contreras, the military commander, to dispose of all the merchandise of Manuel Martinez that was found in that region (pp. 86, 89). This was in the latter part of November, 1913.

On the receipt of that telegram de la Garza sent his order to the military commander at San Pedro (p. 87). The commander at San Pedro then telegraphed back to de la Garza that he had in his possession the merchandise belonging to Manuel Martinez and, as per instructions of General Villa, the goods were on their way to El Paso (p. 88). All of this testimony is oral and neither originals or copies of any of these orders are produced.

This was the latter part of November or the first part of December, 1913 (p. 88).

The Constitutionalists were in turn driven out of Torreon by a return of the Federal forces about December 10, 1913.

It will be observed that there was nothing in the case amounting to competent legal evidence to show the history of these hides between the time they were loaded and locked in the freight cars at Torreon by Martinez in September, 1913, and the last part of December, 1913, when the same cars with bulk unbroken are proved to have been in the control of General Villa at Juarez on the Mexican border opposite El Paso, Texas, and the hides were sold by General Villa to the Finnegan-Brown Company, a Texas corporation.

One-third of the capital stock of the Finnegan-Brown Company was owned by F. M. Brown, and the remaining two-thirds was owned by the John Finnegan Company. Mr. Brown was the Vice-

President and General Manager of the Finnegan-Brown Company. The entire capital stock of the John Finnegan Company was owned by the Central Leather Company (p. 169).

The Central Leather Company is a very large consumer of cattle hides and purchased from the Finnegan-Brown Company most of the cattle hides handled by the latter.

The hides so purchased were delivered to the Central Leather Company under prior contracts calling for future delivery and settlements were made from time to time on running account (p. 170).

The Martinez hides immediately upon purchase by the Finnegan-Brown Company from General Villa were forwarded to New York for delivery to the Central Leather Company under a standing contract.

The Central Leather Company did not give credit to the Finnegan-Brown Company or its factor the John Finnegan Company on account of these hides nor were they so much as invoiced until after the bringing of the present replevin suits and the assertion of the Martinez claim to ownership both through the pleadings in the replevin suit and the deposition of Mr. Martinez (p. 171).

Defendant's witness Brown gives the following version of the transaction of Finnegan-Brown Co. with General Villa. The last day of December or the first of January Major Alvarez and Capt. Moyes called at the Finnegan-Brown warehouse in El Paso, Texas, and asked Mr. Brown to state the price he would pay for cattle hides located in Mexico.

They did not state where the hides were located (p. 147).

Brown refused to give them any quotation, say-

ing that he would not enter into negotiations for hides in Mexico except at the Quartel General or military headquarters in Juarez (p. 148). He gives two explanations for this attitude. For one that his Company owned a large quantity of hides in Mexico, concerning the whereabouts of which he could get no information, and he suspected that the hides offered by the two Mexicans were the hides belonging to his own company and he was therefore unwilling to negotiate until he had an opportunity to satisfy himself that the hides offered were not his own hides (p. 149).

The other reason given is that he suspected that the two Mexicans were spies (p. 149).

He can give no explanation of why he should have been under espionage. He may well have suspected espionage, however, in view of his admitted traffic in confiscated hides (pp. 151, 145), and money advances to the Constitutionalist officers (p. 160).

Mr. Brown thereupon accompanied the two Mexicans to Juarez and negotiated with General Villa.

Gen. Villa said he had brought up a number of cars of hides; that some of these belonged to Mr. Brown's company and the rest belonged to the Constitutionalists and were offered for sale (p. 152).

The price of $1.25 per kilo, Mexican money, was finally agreed upon with the further consideration that the hides should be passed through the Mexican Custom House without any export duty.

Major Alvarez was then deputed by Villa to superintend the transfer of hides from the Mexican cars to American cars which had been run over the river from El Paso (p. 152).

When the cars were opened they were found to

contain not only dry hides but green salted hides, calf skins, goat skins and bales of hair or bristles (p. 152).

The price agreed upon with Villa was for dry hides only. Major Alvarez and Mr. Brown agreed, however, to average the price of the dry hides and settle for the green hides on the same basis (p. 154).

The calf skins, goat skins and bales of hair were weighed up and settled for at the same price per kilo as the dry hides, notwithstanding that the goat skins and hair were worth much more per kilo than dry hides (p. 155).

Mr. Brown says Mexican dollars were then worth thirty-five to forty cents American (p. 150), and that a kilo is equivalent to 2.2 pounds. He also gives the market price for the merchandise in El Paso, which would be the same as Juarez with export duty paid.

A comparison of the price paid Villa and the market price is therefore as follows:

Price paid Villa $1.25 Mexican per kilo of 2.2 lbs. is equivalent to a price of .1988 cents per pound American money at 35 cents exchange for a peso; or .237 cents per pound American at 40 cents exchange.

The market price in American money in El Paso was as follows:

Dry hides 26½ to 27 cents, calf skins the same as dry hides (p. 155), goat skins, 30½ to 32 cents (p. 155). The price of hair is not given, but is said to be "much more" than dry hides (p. 156).

There is no import duty on this class of merchandise into the United States.

Mr. Brown admits that he was personally acquainted with Mr. Martinez; that he had known

him for a number of years and that he had purchased many thousands of dollars' worth of hides from him.

Mr. Brown was present when the hides were being removed from the Mexican cars, weighed and counted and transferred to the American cars (p. 153). The dry hides were all marked with the Martinez initials and many of them had painted on them in large black letters the full name of the Martinez firm. Others had attached to them express company tags showing the name and address of the Martinez firm as consignees (p. 31).

Constitutionalist officers upon request refused to tell who the hides offered for sale belonged to (p. 145).

The hides contained in one of the cars inspected were identified by Mr. Brown or his men as belonging to an American and these hides were accordingly not included in the purchase (p. 131). After the weights were ascertained Villa indicated his preference for American gold and the equivalent amount of gold was agreed upon and Mr. Brown and Major Alvarez together went to a bank in El Paso, obtained the gold and delivered it to General Villa in his headquarters.

The next day the bill of sale (D-4a) was signed by Major Alvarez in Villa's absence.

A special train was immediately made up for Galveston. The goods were entered into United States in bond under an invoice for London, England (p. 132). Mr. Brown personally accompanied the shipment to Galveston, where he personally saw to it that the hides were loaded into the steamship El Oriente and sealed up by the customs officials (p. 132).

Mr. Brown then proceeded by rail from Galveston to New York, arriving in advance of the shipment (p. 159).

At New York the invoices were changed from London and the goods were taken out of bond and immediately transferred from the steamship dock to railroad lighters for shipment over the Pennsylvania Railroad and Erie Railroad to different tanneries of the Central Leather Company (p. 133).

Mr. Brown admits that there was never from the beginning any intention to send the hides to London (p. 159). He further admits that although his company makes very many shipments to the Central Leather Company it was an unusual proceeding for him personally to accompany the shipment (p. 159). The transaction closed at Juarez on January 7th. The cars left El Paso January 8th; arrived at Galveston January 9th. The El Oriente left Galveston January 13th; arrived at New York January 19th (pp. 132, 133).

Questions Involved.

The question involved is presented by plaintiff's proposition that the seizure and attempted sale of the hides in question was at best a confiscation of non-combatant private property by a military commander during a state of war, in violation of the so-called Hague Conventions, or Treaties.

That these Hague Conventions, so far as the United States and Mexico are concerned, have become international law; that the nations of North and South America have expressly adopted the provisions of the Hague Conventions and expressly declared them to be American International Law; that the Courts of the United States will not lend their aid to establish a title to personal property brought within the United States and within the actual jurisdiction and custody of the Court, which depends upon a seizure

abroad, even by a sovereign power, in violation of the law of nations, to which law even the rights of sovereignty must yield.

Specification of the Errors Relied On.

Plaintiff here relies upon errors assigned as follows:

1. The direction of a verdict by the Hudson County Circuit Court, in favor of the defendant and entering judgment thereon in favor of the defendant, against the plaintiff (Assignment 1).

2. The error of said Circuit Court in denying plaintiff's motion for a direction of a verdict against the defendant and for judgment thereon (Assignment 2).

3. The error of the Court of Errors and Appeals of New Jersey in affirming the aforesaid action of the Circuit Court (Assignment 3).

4. The error of said Circuit Court in holding that the provisions of the Hague Conventions were not binding upon the so-called Constitutionalists (Assignment 11).

5. The error of the Court of Errors and Appeals in holding, in substance, that the right to confiscate property in time of war is one of the rights of a military occupant of a territory (Assignment No. 16).

6. The error of the Court of Errors and Appeals holding in substance, that an armed force is permitted to levy contributions and confiscate property in territory occupied by them in time of war (Assignment 17).

7. The error of the Court of Errors and Appeals in giving its judgment in disregard of the provisions of the Hague Conventions as well as the convention of various American nations at

the Second Pan-American Conference (Assignment 18).

8. The error of the Court of Errors and Appeals in basing its judgment upon the ground, among others, that the right to levy contributions is distinctly a conqueror's right (Assignment No. 18).

9. The error of the Court of Errors and Appeals in basing its judgment on the declaration that in the present case the rules of war were complied with (Assignment No. 19).

ARGUMENT.

POINT I.

The final act of divestiture of plaintiff's title occurred within the United States and the legality of such divestiture is examinable with reference to the laws of the United States.

Martinez upon learning of the approach of General Villa to Torreon loaded the property in question in railroad cars and attempted to get it away from the threatened city. The property was intercepted by Villa's agents, who had acquired control of the railway, and by them diverted in unbroken bulk to Juarez. The owner, Martinez, had himself put it in transit for the United States by way of Eagle Pass. Villa's agents, through their control of the railroad officials, simply diverted the shipment to the United States border, via Juarez.

Defendant's witness testified that there was transmitted to the military commander at San Pedro a telegram from General Villa "to dispose of all the merchandise of Manuel Martinez that

was found in that region" (p. 86). This Commander thereupon reported "that he had in his possession the merchandise belonging to Manuel Martinez and as per instructions of General Villa the goods were—that agreeing with General Villa's instruction the goods were on the way to El Paso" (p. 88).

(This testimony was given through an interpreter and evidently the words translated "to dispose of" were used in the sense of "to move" or "forward" rather than in the sense of an absolute disposition or sale.)

Until these goods reached Juarez the Constitutionalists had not dealt with them otherwise than with the carloads belonging to Central Leather Company or its subsidiary (pp. 128, 131), and a carload belonging to an American (p. 131), which they brought to Juarez at the same time. Apparently in the unsettled condition of the country the local Commanders gathered up everything in sight and forwarded to Juarez, the market place, there to be finally dealt with by General Villa himself.

At Juarez, Villa undertook the decisive acts of confiscation. He sent his emissaries into the United States to open negotiations with Finnigan-Brown Company. Mr. Brown admits that he suspected that he was dealing with confiscated property (p. 151). He says he refused to carry on negotiations on American soil, but crossed the river to Villa's headquarters and there arranged the purchase (p. 148).

It was understood by both parties that the goods were to be brought into the United States and that they should be free of all transportation and export duties (pp. 160, 161). It was agreed that they were to be paid for with Ameri-

can gold (p. 156). Mr. Brown and two of General Villa's officers returned to El Paso and there obtained the American gold from an American Bank and took it into Mexico, where it was paid to Villa (p. 157). Brown then returned to El Paso and one of his clerks there prepared the bill of sale which was carried back to Juarez and there executed (p. 129). Villa agreed as part of the transaction to pass the goods free of charges into the United States (p. 158).

The transaction was virtually an agreement to import American gold into Mexico in return for Mexican hides to be imported into the United States, with the Rio Grande as the bargain counter over which the gold and hides were mutually exchanged.

Under such circumstances, we submit that the legal question presented is the same as though General Villa had himself brought these goods within the United States and was now called upon to vindicate his title thereto.

The final act of confiscation was the sale to Finnigan-Brown, which was also an act of international commerce, although Mr. Brown obviously sought to deprive it of that character by insisting on journeying to the Mexican side of the river for the purpose of concluding his negotiations and taking title.

As an act of international commerce it must conform to the laws and policy of the United States, at least to the extent that a citizen of the United States participating therein is to be recognized in our courts as having acquired an interest in the subject matter of that commerce when brought within the United States.

Indeed the Constitution expressly delegates to Congress power to regulate commerce with foreign nations.

Since the hides were sold by General Villa for export to the United States, it would seem that the place where title technically passed is of no more importance than in cases of interstate commerce. This court has held that a sale of goods intended for shipment out of a State is interstate commerce, although the sale was concluded and title passed wholly within the state of origin. See *Pennsylvania R. R. Co. vs. Clark Bros. Coal Co.,* 238 U. S., 456, 466-468, citing many cases.

POINT II.

Defendant is not a bona fide purchaser and the case should be determined as though the chattels had been found within the United States in the possession of the Constitutionalists.

It sufficiently appears the Finnegan-Brown Company was virtually a subsidiary purchasing agent for Central Leather Company and the latter company, even if it did not know of the traffic being carried on by Finnegan-Brown Company with the Revolutionists, at the time of the arrival of the goods in New York (which may well be doubted) was certainly fully informed of the circumstances by reason of the bringing of the replevin suit and the Martinez deposition therein (taken February 6, 1914), before it so much as received an invoice or passed a credit to the Finnegan-Brown Company or the John Finnegan Company.

As to the Finnegan-Brown Company the proof is plenary that Mr. Brown was thoroughly

aware of the conditions under which the Revolutionists had obtained the merchandise which they offered for sale. His refusal to touch similar merchandise which he recognized as belonging to an American; his unusual conduct in personally accompanying the shipment and the deception practiced in billing it to London, and the greatly depreciated price at which it was bought, all lead to the inevitable conclusion that he had full knowledge of the circumstances, and knowingly and purposely assumed the risk in the expectation of tremendous profit.

The question of innocence is further conclusively put at rest by defendant's stipulation at the end of the case that it claims no better title than the vendor in the sale negotiated at Juarez between Gen. Villa and Mr. Brown (p. 325).

POINT III.

The seizure, under the circumstances proved, was in violation of the modern law of nations as declared by the Hague conventions and the Pan-American conference, even though the captors be conceded the status of a belligerent sovereign.

Formerly private property found within enemy territory might be captured as booty of war. This rule was abandoned, however, as a rule of international law by our courts as early as the Civil War.

In *United States vs. Klein,* 80 U. S. 128; 20 L. E., 519, 522, Chief Justice Chase, commenting on the Abandoned and Captured Property Act, says:

> "It is thus seen that, except to property used in actual hostilities * * * no titles were divested in the insurgent states unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized to the fullest extent the humane maxims of the modern law of nations, *which exempts private property of non-combatant enemies from capture as booty of war* (Italics ours). Even the law of confiscation was sparingly applied. The cases were few, indeed, in which the property of any not engaged in actual hostilities was subjected to seizure and sale."

It seems that prior to the Hague Conventions there survived the sovereign right to confiscate private property of an enemy, exercisable under some form of orderly procedure, and clearly distinguished from the ancient right to take booty.

The Abandoned and Captured Property Act of the Civil War was justified as an exercise of such sovereign power.

In *Planters Bank vs. Union Bank,* 16 Wallace 483; 21 L. E., 473, a Union military commander had made an order directing defendant to pay to him a fund held by it within the confederacy for a depositor held to be an enemy.

Held that such an order was not within the act of Congress, Justice Strong saying (p. 478 L. E.):

> "Hence the order was no attempt to seize property *flagrante bello,* nor was it a seizure for immediate use of the army. It was simply an attempt to confiscate private property which though it may be subjected to confiscation by legislative authority, is, according to the modern law of nations, exempt from capture as booty of war."

In *United States vs. Percheman,* 7 Peters 51; 8 L. E., 604, there was an application to confirm a land title acquired under the Spanish Governor of Florida before cession to the United States. Chief Justice Marshall says (p. 85):

> "It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rightes annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed."

In *Eastern Lunatic Asylum vs. Garrett,* 27 Gratt. 163, a Union Commander during the Civil War seized corn and bacon belonging to Confederate non-combatants and transferred these provisions to a local lunatic asylum for the use of the inmates. The original owner afterwards brought suit against the Asylum. Held that inasmuch as the goods were not taken for immediate military purposes, title did not pass and that the Asylum was liable for the value of the goods.

The Hague Conventions.

Since these decisions there has been a further advance in International Law brought about by the general adoption of the Hague Conventions.

The Fourth Convention of The Hague, 1907, is given in full in Hall's International Law, page 157. The provisions, so far as important in this litigation, are as follows:

The preamble states the purpose of the Convention as follows:

> "According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.
>
> "It has not, however, been found possible at present to concert Regulations covering all the circumstances which arise in practice;
>
> "On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.
>
> "Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.
>
> "They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.
>
> "The high contracting parties, wishing to conclude a fresh Convention to this effect, have appointed the following as their plenipotentiaries:
>
> (Here follow the names of plenipotentiaries).
>
> "Who, after having deposited their full powers, found in good and due form, have agreed upon the following: * * *
>
> "Annex to the Convention—Regulations respecting the laws and customs of war on land.

"Chapter I—The Qualifications of Belligerants.

"Art. 1. The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions. * * * 4. To conduct their operations in accordance with the laws and customs of war." * * *

"Chapter 2, Article 4: Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

"Art. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

"Art. 23. In addition to the prohibitions provided by special conventions, it is especially forbidden: * * * (g) to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

"Art. 28. The pillage of a town or place, even when taken by assault, is prohibited.

"Art. 43. The authority of the legitimate power having in fact passed into the hands of the occupant the latter shall take all the measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

"Art. 46. Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

"Art. 47. Pillage is formally forbidden.

This Convention was ratified by the United States without reservation on November 27th, 1909, and the adherence of the United States to it was repeated by resolution dated December 3rd,

1909. The Convention was ratified by the Republic of Mexico on November 27th, 1909. In 1912 at the Pan-American Congress, at which both the United States and Mexico were represented, the Convention was formally adopted "as public international American law."

See:

International American Conference Vol. II, pp. 336, 337;
Scott's Hague Peace Conferences, Vol. I, p. 761.

In the present suit, the Trial Court in its opinion said, with respect to the Convention (p. 179):

> "I am of the opinion that the provisions of The Hague Conventions are only binding and effective as between contracting powers or where the belligerents were parties to the Convention. I cannot see that in this sense the Constitutionalist forces, whose acts are complained of, are bound thereby."

The point is not discussed in the opinion of the Court of Errors and Appeals.

Many of the provisions of this "Convention" define the restraints which most of the signatory powers had theretofore seen fit to impose upon themselves in waging war. However such self-imposed restraints were theretofore without sanction other than the public conscience, and it was held to be a right of sovereignty to abrogate and disregard them at will.

Other provisions of the Convention, such as the forbidding of confiscation in war, are a distinct curtailment of what had previously been asserted and practiced as one of the undoubted rights of those who waged war.

As to both classes of provisions, it was the

plain intent of the Nations to safeguard private rights even in time of war by the sanction of a covenant entered into by practically all the civilized nations of the world and to modify in the interest of humanity the absolute right previously recognized "to seize and confiscate all property of an enemy and to dispose of it at the will of a captor."

Miller vs. U. S., 11 Wallace, 268.

Under the proofs of this case we submit that the taking of the property in question was either an act of pillage or of confiscation or the taking of booty, each of which is expressly forbidden by The Hague Convention, if that be held to apply either as a treaty binding upon the parties or as the declaration of a public policy by the United States.

POINT IV.

Since the institution of this suit, the binding effect of The Hague Conventions has been repeatedly recognized by the courts.

The Appam, 234 Fed., 389; 243 U. S., 124.

In this case The Hague Convention was referred to in the District Court and in the Supreme Court as declaring the public policy of the United States, even though Great Britain, whose subject was awarded the ownership of the "Appam," did not ratify the pertinent clause of the Convention.

Judge Waddill says, p. 397:

> "The provisions of Articles 21 and 22 of the Hague Convention of 1907, are declaratory of the existing law of nations and the fact

> that article 23, which provided for the use of neutral ports by belligerent prizes, was expressly rejected, and 21 and 22 adopted by the United States, but emphasizes its policy respecting the subject. It is true Great Britain did not ratify the action of its commissioners, assenting to the provisions of articles 21 and 22 of the Hague Convention, though most of the other powers, some 43 in number, including Germany and the United States, did. Still, it nevertheless shows what the policy of the United States and Germany alike was, in regard to the use of their waters and harbors for belligerent prizes."

In affirming this decision, this Court said (pp. 150, 151):

> "This policy of the American government was emphasized in its attitude at The Hague Conference of 1907. * * * To these articles adherence was given by Belgium, France, Austria Hungary, Germany, the United States and a number of other nations. They were not ratified by the British Government. This government (U. S.) refused to adhere to Art. 23, which provides: (quotation). * * * While this treaty may not be of binding obligation owing to lack of ratification, it is very persuasive as showing the attitude of the American government when the question is one of international law."

(The "lack of ratification" refers to Great Britain.)

In Re Toscano, 208 Fed., 938 (Dist. Ct., Southern Dist. of Cal.).

In this case certain officers and soldiers of the Mexican Federal Army, who had escaped into the United States, were interned upon the orders of the United States Government.

Thereafter they sought their liberty on habeas corpus.

We quote the following from the opinion of Judge Wellborn (p. 940):

> "The government bases its authority for detaining petitioners on chapter 2, art. II, of the Convention at The Hague, October 18, 1907, ratified by the contracting powers, including the United States of America and Mexico, November 27, 1909."
>
> (P. 942.) "Petitioners, however, contend, that The Hague Treaty, relating to internment, is not self-executing. This position is untenable. The treaty is full and complete and no legislation is necessary to its enforcement."
>
> (P. 943.) "Petitioners further contend that, as the government of the United States has not accorded official recognition to either party to the civil war in Mexico, neither of said parties is a nation, within the meaning of the international law, and therefore the principles of international law do not apply. These views, however, are unsustained by authority."
>
> (P. 944.) "Petitioners' contention, therefore, that Mexico, because of the civil war, is not subject to international law, or more specifically The Hague Treaty, is without merit.
>
> "My conclusions are: First, that the petitioners are completely within the provisions of chapter 2, art. II, of The Hague Treaty; second, that said article violates no provision of the Constitution of the United States, requires no legislation to render it effective, and is accordingly the law of the land; and third, that the President has full authority, and it was and is his duty to execute said treaty provisions."

This decision is very directly in point.

In the Toscano case the Court was called upon to determine the status of human spoils of war, found within the territory of the United States.

In the case *sub judice,* the Court is, likewise,

called upon to determine the status of material spoils of war which have been brought into our territory.

The provisions of the Hague Convention have apt clauses to govern both cases.

The Toscano case holds in direct conflict with the New Jersey Court that the Hague Convention is binding upon the parties to the late war in Mexico, and that the courts of this country in determining the status of the agencies of that war when found within the United States are to do so in accordance with the Hague Convention.

Furthermore, in the fact that the Government in the Toscano case arrested and detained these soldiers, acting under a clause of the Hague Convention, we have an interpretation placed by the Executive upon the Convention.

Such an interpretation is usually conclusive of the scope of the treaty.

The Toscano case, therefore, has the double value of a court adjudication and an executive policy, both to the effect that The Hague Convention controls the Mexican factions in the conduct of their civil war.

The Möwe, 31 T. L. R., 46; 84 L. J. P. 57; (1915) P. 1; 1 P. Cas. 60.

Evans, President of the Court, said:

> "The practice should conform to sound ideas of what is fair and just. A merchant who is a citizen of an enemy country would not unnaturally expect that when the State to which he belongs, and other States with which it may unhappily be at war, have bound themselves by formal and solemn Conventions dealing with a state of war like those formulated at The Hague in 1907, he should have the benefit of the provisions of such inter-

national compacts. He might equally naturally expect that he would be heard in cases where his property or interests were affected as to the effect and results of such compacts upon his individual position. It is to be remembered also that in the international commerce of our day the ramifications of the shipping business are manifold; and others concerned, like underwriters or insurers, would feel a greater sense of fairness and security if, through an owner (though he be an enemy), the case for a seized or captured vessel were permitted to be independently placed before the Courts.

"From the considerations to which I have adverted, I deem it fitting, pursuant to powers which I think the Court possesses, to direct that the practice of the Court shall be that whenever an alien enemy conceives that he is entitled to any protection, privilege, or relief under any of The Hague Conventions of 1907, he shall be entitled to appear as a claimant, and to argue his claim before this Court. The grounds of his claim would be stated in the affidavit before appearance which is required to be filed by Order III, Rule 5, of the Prize Court Rules, 1914."

The cases are numerous in which the British Prize Courts, including the Privy Council, have considered various provisions of The Hague Conventions to determine whether or not a given vessel or property was entitled to immunity from capture in the present German world. In all cases the Court has treated the Convention as in force and as laying down the rule which the Prize Court will administer.

Among such cases are the following:

The "Chili," 31 T. L. R., 3; 84 L. J. P., 1; (1914) P. 212; 1 P. Cas. 1;

The "Ophelia," 31 T. L. R., 452; 84 L. J. P., 131; (1915) P. 129; 1 P. Cas. 210;

The "Belgia," 31 T. L. R., 490; 59 S. J., 561, 1 P. Cas., 303;
The "Germania," 32 T. L. R., 68; 85 L. J. P., 74, 1 P. Cas., 573; (1916) P. 5;
The "Prinz Adalbert," 32 T. L. R., 378; 85 L. J. P., 108, 2 P. Cas., 70; (1916) P. 81;
The "Gutenfels," 32 T. L. R., 433; 85 L. J. P. C., 146, 2 P. Cas., 36; (1916) A. C., 112;
The "Belgia," 32 T. L. R., 435; 85 L. J. P., 106, 2 P. Cas., 32; (1916) 2 A. C., 183;
The "Marquis Bacquehem" 32 T. L. R., 462; 85 L. J. P. C., 151, 2 P. Cas., 58; (1916) 2 A. C., 186;
The "Concodoro," 32 T. L. R., 465; 85 L. J. P. C., 156, 2 P. Cas., 64; (1916) 2 A. C., 199;
The "Ophelia," 32 T. L. R., 502; 85 L. J. P., 169, 2 P. Cas., 100; (1916) 2 A. C., 206;
The "Turbantia," 32 T. L. R., 529;
The "Bangor," 32 T. L. R., 590; 85 L. J. P., 218, 2 P. Cas., 206 (1916) P. 181.

POINT V.

The seizure cannot be vindicated as an exercise of the taxing power or as a forced contribution.

In order to so justify the defendant must come within the following provisions of The Hague Convention:

> "Art. 48. If, in the territory occupied, the occupant collects the taxes, dues and tolls, imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate government was so bound.
>
> "Art. 49. If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.
>
> "Art. 50. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.
>
> "Art. 51. No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief.
>
> "The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force. For every contribution a receipt shall be given to the contributors."

The evidence clearly shows that the present case does not come within these provisions.

When Villa captured the City, the wealthy men

went into hiding in fear both for their lives and property (p. 92). Some looting immediately took place and the banks were compelled to pay out money to Villa on demand (pp. 99, 27, 28). The emissary of certain capitalists then went to Villa to find out the condition upon which he would agree to give them personal immunity and prevent the looting of the City (p. 92). His condition was the payment of a lump sum of money. It was then agreed that a self-constituted committee of business men should apportion the contribution among various individuals and should have a time within which to make collections from their fellow citizens, during which time Villa agreed that all persecutions should be suspended (p. 98).

The citizens' committee finally turned over to Villa's representative a list showing the names of those who had paid and those who had not paid.

As to the latter Villa was then free to do as he pleased.

In other words, the citizens who contributed to this fund, which was apportioned by a self-constituted citizens' committee, which neither represented the municipality nor the Constitutionalists, simply purchased immunity from "looting" and "scandals" and "depredations," extending even to the threatened loss of life, which were imminent when Villa captured the City (p. 81).

As to those who did not see fit to purchase immunity, the "depredations" and "looting" and "scandals" proceeded unrestrained.

Martinez apparently considered his safety so imperiled that he fled the city and his entire movable property, being found in the possession of a relative at San Pedro, was seized by General Villa's order and sent to the latter at Juarez, without any formality and without any relation whatever

between the value of the property and the amount of his apportioned contribution.

In fact no witness in the case was able to tell even approximately the amount of this alleged assessment apportioned to Martinez.

We submit that there is nothing about the proceeding which has the slightest resemblance to the levying of a tax.

Articles 48 and 49 above permit the military occupant to collect "the taxes, dues and tolls imposed for the benefit of the State."

These articles, however, impose upon the military occupant, in consequence of such collection, the duty of defraying "the expenses of the administration of the occupied territory to the same extent as the legitimate government was bound."

Further, in collecting such taxes, the military occupant must do so "in accordance with the rules of assessment and incidence in force."

This provision goes no further than to permit the conqueror to collect taxes for local governmental purposes. For the time being he administers the government which he has driven out and therefore is permitted to collect the revenues of the displaced government in order to discharge its duties. He is permitted to collect taxes imposed *for the benefit of the State.*

This is a very different thing from the levy attempted by General Villa. The latter descended upon the City and imposed a ransom of a lump sum of money under penalty of sacking the City if he did not get it. He said he wanted the money in order to enable him to conquer all the northern part of the country (p. 93). There was no pretence that it was demanded in order to enable him to administer the local government. While certain citizens were endeavoring to raise

the money among the inhabitants, Villa placed his soldiers in charge of the banks and the warehouses, which he virtually held as hostage.

Nor is there the slightest evidence to show upon what principle the self-appointed committee proceeded to collect money from the inhabitants to make up the gross sum demanded. For aught that the evidence shows, this sum may have been made up of voluntary contributions, and in such event would have no significance beyond the voluntary contributors.

There is no evidence to show what were the "rules of assessment and incidence in force" in the locality at the time of the conquest nor is there anything to show that the money was raised in accordance with any rules or uniform practice whatever.

If it be attempted to justify the performance as a "contribution" permitted by articles 49 and 51 of The Hague Conventions, it will be observed that the permitted contribution may be imposed only "for the needs of the army or of the administration of the territory in question."

We submit that the military contribution permitted by Article 49 "for the needs of the army or of the administration of the territory in question" is limited to the needs of the army of occupation for its maintenance and does not extend to the financing of the war and the maintenance of an army in distant parts, projecting a plan of conquest against other territory in distant States.

Even such contributions must, under Article 51, be effected in accordance with the established rules of assessment, with which, in the present instance, there was no attempt to comply.

This inquiry, however, is immaterial so far as Martinez is concerned, because the seizure in ques-

tion was not an attempt to collect a tax or a contribution. All of his property of every nature and description was seized and disposed of without inquiry as to its nature or value, because he is said to have failed to purchase immunity by contributing some amount, not proved, to a fund which certain of his fellow citizens undertook to raise in order to protect their own property from looting and their own persons from violence.

In its best aspect, the act was one of confiscation and not the collection of a tax or a contribution.

POINT VI.

The Courts of this country have jurisdiction to inquire, to an extent, into the legality of the acts of foreign powers or courts, even of recognized sovereigns, when necessary for the determination of the title to property brought within the jurisdiction of our courts.

Rose v. Himely, 4 Cranch., 241; 2 L. E., 608, Marshall, C. J., page 617.

> "For example in every case of a foreign sentence condemning a vessel as prize of war, the authority of the tribunal to act as a prize court must be examinable. Is the question whether the vessel condemned was in a situation to subject her to the jurisdiction of that court also examinable? This question in the opinion of the court must be answered in the affirmative."

In *Sabariego v. Maverick,* 124 U. S., 261, plaintiff, a Mexican citizen, sued to recover lands in Texas, claiming title through an act of confiscation and sale by the Spanish Government, at a time when Spain exercised unquestioned sove-

reignty over the territory. *Subsequent* to the confiscation and sale Mexico including what is now the State of Texas became a republic and still later the Mexican State of Texas became first an independent nation and then a part of the United States.

Plaintiff relied upon the deed or grant of the Spanish Government reciting a confiscation by the military commander on the ground of treason.

The Court held that although where property belongs to the sovereign, the deed or grant of the officer who assumes to convey it, is presumed to be regular and the recitals therein are admissible, the same rule does not apply where it is denied that the sovereign in fact owned the property which its officer assumed to convey.

> "In no case, however, have they (the documents of conveyance and the recitals therein) been held sufficient, where the fact in issue was whether the Government at that time had any title to convey, to establish the fact in dispute, as against parties claiming a pre-existing adverse and paramount title in themselves. All that can be reasonably or lawfully claimed as the effect of such documents of title is that they pass such estate, and such estate only, as the Government itself in whose name and on whose behalf the official acts appear to have been done had at the time, but not to conclude the fact that the estate conveyed was lawfully vested in the grantor at the time of the grant."

The Court then proceeded to examine the Spanish law, from which it appeared that private property could be confiscated for treason, but only upon a prescribed procedure; that there was no competent proof of such procedure; that such procedure was not to be presumed from the grant and the recitals therein (p. 442).

" 'The extent to which presumptions will be made in support of acts depends very much on whether they are favored or not by law, and also on the nature of the fact required to be presumed.' It does not apply to give jurisdiction to magistrates or other inferior tribunals, nor to give jurisdiction in proceedings not according to the common course of justice.

"We are asked to assume that Miguel Losoya was guilty of the offense of treason * * * and that he was so adjudged in regular judicial proceedings, on the basis of which conviction his property was officially seized and confiscated * * *. If we had before us an actual and formal decree of a competent tribunal adjudging him guilty of the offense and confiscating his property in punishment therefor, that of itself would not be sufficient to establish its own validity. We should still require record evidence of the existence of those facts which brought him and his property within the jurisdiction of the tribunal pronouncing such a decree."

In *re—The Santissima Trinidad,* 7 Wheaton, 284; 5 L. E., 454, an American ship was fitted out in U. S., armed and manned and sailed to Buenos Ayres with the intention of there selling to the latter Government, which was in rebellion against Spain. Sale was effected under circumstances entitling the ship thereafter to status of a public war ship of the Buenos Ayres Government. Some considerable time afterward she returned to U. S. and her force was augmented by men and an armed tender. On the new cruise she captured a Spanish ship and cargo, which prize subsequently came into the U. S. and was claimed by the original owners on the ground that the neutrality of the U. S. was violated, and, therefore, that the U. S. would not recognize the legality of the prize. So held. The captors contended that *"The*

Cassius," 3 Dallas, 121, was authority to the contrary. In that case a libel was filed in the U. S. against "The Cassius," a public armed ship of France, to obtain compensation in damages in rem for an asserted illegal capture of another vessel belonging to the libellants on the high seas, and sending her into a French port for adjudication as prize * * *.

Referring to the case of the Cassius the Court said:

> "The principal question was whether our Courts could sustain a libel for compensation in rem against the *capturing vessel* for an asserted illegal capture as prize on the high seas, when the prize was not brought into our ports but was carried into a port *infra praesidia* of the captors. The Court granted the prohibition; but as no reasons were assigned for the judgment, the only ground that can be gathered, is that which is apparent on the face of the writ of prohibition, where it is distinctly asserted, that the jurisdiction in cases of this nature exclusively belongs to the courts of the capturing power, and that neither the public ships of a nation, nor the officers of such ships are liable to be arrested to answer for such captures in any neutral court. The doctrine of that case was fully recognized by this court in the case of *The Invincible,* 1 Wheaton, 238; and it furnishes a rule for the exemption of a public ship from proceedings in rem, in our courts, for illegal captures on the high seas, in violation of our neutrality; *but in no degree exempts her prizes in our ports from the ample exercise of our jurisdiction.*
>
> "* * * (p. 354). We are of opinion * * * whatever may be the exemption of the public ship herself, and of her armament and munitions of war, the prize property which she brings into our ports is liable to the jurisdiction of our courts, for

> the purpose of examination and inquiry, and if a proper case be made out, for restitution to those whose possession has been divested by a violation of our neutrality; and if the goods are landed from the public ship in our ports, the express permission of our own government, by that does not vary the case, since it involves no pledge that if illegally captured they shall be exempted from the ordinary operation of our laws." (Italics ours.)

Miller v. The Ship "Resolution," Federal Court of Appeals, 1781; 2 Dallas, page 1; 1 L. E., page 263—Appeals from the Admiralty Court of Pennsylvania.

The ship "Resolution" belonged to neutral Dutch owners and was seized by a British privateer and remained in possession of the captor for more than twenty-four hours, when it was in turn captured by an American privateer. The American captors libeled the ship as British prize. The latter seizure was justified on the ground that under the Law of Nations the British capture and retention for more than twenty-four hours passed title to the British captors, and that it was not open to the American Prize Court to question the validity of the British capture.

P. 263:

> "All the authorities cited on cases of capture authorized by the rights of war, are where the property captured was the property of an enemy; not an instance has been produced where a capture, not authorized by the rights of war, has been held to change the property; but many authorities have been brought to show, that no change is effected by such capture. To say that a capture which is out of the sanction and protection of the rights of war, can nevertheless derive a validity from the rights of war, is surely a contradiction in terms. The rights of war can only

take place among enemies, and, therefore, a capture can give no right, unless the property captured be the property of an enemy. * * * But, it is said, the fact cannot be ascertained, that the capture in this case was not authorized by the rights of war—for it depends upon the will of the sovereign, whether an outrage and capture, *supra altum mare,* by his subjects of the property of subjects of another nation, shall be an illegal and piratical act or an act of hostility. * * *

"But it is alleged that the capture by the British privateer must be considered as legal: For, after a capture and occupation for twenty-four hours, the legality of the capture is not open for question and examination.

"This doctrine must never be suffered; there is no example or precedent for it to be found in any of our books; it breaks down and destroys the distinction between right and wrong; it gives a sanction to injustice, robbery and piracy, and it is reprobated by the laws, usage and practice of nations."

Hilton vs. Guyot, 159 U. S., 113; 40 L. E., page 95, Gray, Justice.

Hilton & Company owned property in France where judicial proceedings were brought against them and they appeared in order to protect the local property. A large judgment was recovered and suit was brought in the United States to recover thereon. *Held* that a foreign judgment under the law of nations was of prima facie authority only and the extent of its recognition depended upon comity and that the judgment was subject to examination both on the ground of merits and jurisdiction.

P. 108:

"International law in its widest and most comprehensive sense—including not only questions of right between nations, governed by what has been appropriately called the law

of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation—is part of our law, and must be ascertained and administered by the courts of justice, as often as such questions are presented in litigation between man and man, duly submitted to their determination. * * *

"The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so in order to determine the rights of parties to suits regularly brought before them. * * *

"Comity in the legal sense, is neither a matter of absolute obligation on the one hand, nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws. * * *"

"Every foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings and due notice. * * *

"A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, *unless contrary to the policy of its own law.* * * *" (Italics ours.)

Under this head defendant chiefly relies upon *Underhill vs. Hernandez,* 168 U. S., 250. There a

military commander of an insurgent army in Venezuela, restrained an American citizen of his liberty, in order to compel him to operate a water works and a machine shop, both of which were of military importance. The revolution became successful and thereafter the military commander journeyed to the United States and was here sued in an action of tort to recover damages as for an illegal arrest.

The Court says:

> "The immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority, whether as civil officers or as military commanders, must necessarily extend to the acts of governments ruling by paramount force."

We submit that there is a distinction between holding a governmental officer or commander personally responsible in damages in a foreign country for a governmental act committed by him within his own country, and adjudicating as to the legal sufficiency of that act, as passing title to property when that property finds its way into the foreign country.

This distinction is clearly indicated in *Santissima Trinidad,* 7 Wheat., 284, which case, in substance, holds that the public ship of a foreign sovereign is exempt from liability for an illegal capture although the legality of the seizure will be inquired into when the prize is brought within the jurisdiction of our courts, and the prize will be awarded to the lawful owner.

POINT VII.

It is against the public policy of the United States and the Courts thereof, to give effect to the acts of a foreign sovereign, even though committed within territory which he controls, if those acts offend against the law of nations.

Cases are cited in the foregoing part of this brief showing instances where our courts have taken jurisdiction to inquire into the lawful title to prize, where such prize has been seized abroad by a foreign sovereign power, the matter involving, however, in some measure, a breach of the neutrality of the United States.

The latest instance of this exercise of jurisdiction is in re *The "Appam"* supra.

Since the rights of neutrality are solely the creature of the law of nations, we submit that this established jurisdiction is equivalent to saying that our courts will examine into such sovereign acts to ascertain whether or not they violate the law of nations.

Physical property brought within our jurisdiction brings with it, of necessity, the rights of individuals with respect thereto, and when those rights are brought for decision before our courts, in orderly procedure, our courts must, of necessity, conduct a judicial investigation in order to adjudicate upon those rights. Where that investigation discloses that the title of one of the claimants is based upon a governmental act, which, on its face, violates the law of nations equally binding on the United States as well as upon such foreign power, we submit that it is

contrary to public policy that our courts should give their aid to the enforcement of such a title. Particularly, we submit, is this public policy emphasized by the position of the United States in the present World War.

Our government, we believe, from the beginning has consistently refused to recognize the validity of the acts of the German Empire which violate international law, and in the diplomatic correspondence upon the subject and in the messages of the President will be found protests against the violations by Germany of its treaties, including the treaties of The Hague.

Undoubtedly the acts of Germany complained of were acts of a sovereign power, but our Government has refused to recognize the validity of those acts, when they violated the law of nations.

Even before our entrance in the war, the French Government brought to the notice of the nations that the German military forces before their retirement on the Somme, removed into Germany the portable property of the inhabitants of the occupied territory, in violation of the Hague Conventions and the French government protested against the recognition of any title to such property derived through such seizure.

In case such property finds its way into the United States and is here claimed by the French owner, we should suppose that it would hardly be contended that our courts were without jurisdiction to determine whether or not the seizure violated international law.

In Vol. 2, Oppenheims International Law, pages 295, 296, precedents are cited where purchasers of confiscated timber from German military commanders in occupation of portions of France during the Franco-Prussian War were prohibited after

peace, from recovering possession of purchased timber, on the ground that the confiscation violated the laws of war.

We submit that the public policy of the United States is now definitely committed to the proposition that the sovereign power of nations is not unlimited, but must be exercised in consonance with the law of nations and that we recognize no rights acquired in violation of that supreme law.

POINT VIII.

The law of nations does not require the courts of the United States to recognize the title to private property lawfully acquired abroad where such recognition involves the sanction of practices opposed to the public policy of the United States.

We think the above proposition underlies the decisions respecting the status under International law, of a slave imported from a sovereignty where title to the slave was lawfully acquired into another sovereignty where slavery is forbidden.

In *Prigg vs. Penn.,* 16 Peters, 539, 611, Justice Story says:

> "By the general law of nations no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is recognized."

The English cases to the same effect are collected in the text and note, Vol. 2, Kents Commentaries,* pages 248, 249.

POINT IX.

The judgments against the plaintiff should be reversed and judgments directed to be entered in favor of the plaintiff for the stipulated value of the hides.

It is stipulated that the value of the hides in question in the first suit at the time and place when they came into possession of the defendants was $11,010.83.

The value of the hides involved in the second suit was likewise stipulated in be $7,493.

The chattels having been bonded by the defendant in the replevin action and the value being conceded, this Court should direct the entry of judgment for above amounts with interest from January 22nd, 1914.

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OSCAR R. HOUSTON,
JAMES D. CARPENTER, JR.,
Of Counsel with Plaintiff in Error.

CASES CITED.

PAGE

Mrs. Alexander's Cotton, 2 Wall. 404..... 74
Alexander *v.* Pennsylvania Co., 48 Ohio St. 623, 636; 30 N. E. 69..... 40, 45
Ambrose Light, The, 25 Fed. Rep. 408..... 62
American Banana Co. *v.* United Fruit Co., 213 U. S. 347..... 43, 44, 46, 87

Baasch & Römer (Netherlands) *v.* Venezuela (Feb. 28, 1913), Ralston 907..... 100
Baltimore & Potomac R. R. Co. *v.* Hopkins, 130 U. S. 227..... 13, 14
Beuttell *v.* Magone, 157 U. S. 154..... 33
Bolivar Ry. Co. (Gt. Brit.) *v.* Venezuela, Ralston, Venezuela Arbitration of 1903, p. 394..... 100
Bordwell P. Law of War, chaps. VIII, IX... 101
Brown *v.* U. S., 8 Cranch, 110..... 65
Burthe *v.* Dennis, 133 U. S. 514..... 18

Canfield *v.* McIlwaine, 32 Md. 94..... 38
Chaffee *v.* U. S., 18 Wall. 516..... 39
Chubb *v.* Upton, 95 U. S. 665..... 34
Conde *v.* York, 168 U. S. 642..... 35, 36
Cook County *v.* Calumet & Chicago Canal Co., 138 U. S. 635..... 13
Cooper *v.* Coates, 21 Wall. 105..... 34
38 Cyc., 545, 546, 2008, 2087, 2094..... 39, 40, 42

DeLamar's Nevada G. M. Co. *v.* Nesbitt, 177 U. S. 523..... 35
District of Columbia *v.* Gannon, 130 U. S. 227. 13
Divina Pastora, The, 4 Wheat. 52..... 56
Dix (U. S.) *v.* Venezuela, Ralston Arbitration of 1903..... 7, 100

Edye *v.* Robertson, 112 U. S. 580, 598..... 15
Egyptian Monarch, The, 36 Fed. 773..... 39, 44
Elphinstone *v.* Bedreechund, 1 Knapp P. C. 316..... 82

PAGE

Fowks *v.* Peru, For. Rel. 1901, 430–434..... 101

Giles *v.* Little, 134 U. S. 645, 650..... ..... 35, 36
Glenn *v.* Garth, 147 U. S. 360..... 13
Graham *v.* Purcell, 126 App. Div. (N. Y.) 407. 42

Hague, The (Nijhoff, 1915–1916) 108 p. and suppl..... 101
Haile *v.* Richardson, 2 Strob. 114, 33 So. Car. Law 144..... 38
Hall, Part III, chap. IV..... 101
Haycraft *v.* U. S., 22 Wall. 81..... 78
Heny (U. S.) *v.* Venezuela, Ralston Arbitration of 1903, pp. 14, 22..... 100
Hill (U. S.) *v.* Peru (Dec. 4, 1868), Moore Arb. 1665..... 101
Hughes (U. S.) *v.* Mexico (Mar. 3, 1849), Moore Arb. 2972 101

International Nav. Co. *v.* Lindstrom, 123 Fed. 475..... 39, 44

Johnson *v.* N. Y. Life Ins. Co., 187 U. S. 491. 13
Jones *v.* U. S., 137 U. S. 202.....12, 21, 27, 48

Kennard *v.* Nebraska, 186 U. S. 304..... 13
Kennett *v.* Chambers, 14 How. 38..... 58
Kummerow (Germany) *v.* Venezuela (Feb. 13, 1903), Ralston's Arbitration of 1903, p. 561. 100

Lamar *v.* Browne, 92 U. S. 187, 195..... 80, 87
Lamington, The, 87 Fed. 752..... 39, 44
Lampasas *v.* Bell, 180 U. S. 276..... 35, 36
Lancaster *v.* Collins, 115 U. S. 222..... 34
Leonard *v.* Columbia Steam Navigation Co., 84 N. Y. 48..... 39, 44
Linford *v.* Ellison, 155 U. S. 508..... 13

MacCord *v.* Peru (May 17, 1898), 6 Moore Dig. 985-990..... 101
Maghell *v.* Sultan of Jahore (1894), 1 Q. B. 149. 22
Magoon Rep., 11 ff..... 102

PAGE

Mammoth Min. Co. *v.* Salt Lake Foundry & Machine Co., 151 U. S. 447..... 34
Marshall *v.* Gordon, 243 U. S. 521, 526..... 19
Mauran *v.* Insurance Co., 6 Wall. 1..... 89
McDonald *v.* Mallory, 77 N. Y. 546..... 39, 44
Miller *v.* U. S., 11 Wall. 268..... ....66, 67
Minn. Canal & P. Co. *v.* Pratt, 101 Minn. 197; 112 N. W. 395..... 19
1 Moore Dig. 45, ff. 176, 177.....61, 101
7 Moore Dig. 245, ff. 280 287.....95, 101
Moses *v.* U. S., 166 U S. 571..... 34
Motes *v* U. S., 178 U. S 458..... 34
Mutual Life Insurance Co. *v.* McGrew, 188 U. S. 291..... 13

Northern Pacific R. R. Co. *v.* Babcock, 154 U. S. 190 ..... 38, 43
Northern Pacific R. R. Co. *v.* Mase, 63 Fed. 114..... 39, 44

2 Opinions Atty. Gen. 321 101
9 Opinions Atty. Gen. 140 101
Oppenheim, p. 204, ff..... 101
Ex parte Orozco, 201 Fed. 106..... 55
Oteri Claim *v.* Honduras, For. Rel. 1899, 352. 100
Owings *v.* Norwood, 5 Cranch 344..... 35

Pearcy *v.* Stranahan, 205 U. S. 257..... 27
Phillips *v.* Eyre, L. R. 6 Q. B., 1, 28..... 39, 45
Planters Bank *v.* Union Bank, 16 Wall. 483.. 85
The Prize Cases, 2 Black 635..... 60, 89

Redler (Germany) *v.* Venezuela, Ralston's Arbitration of 1903, 560..... 100
Rose *v.* Himely, 4 Cranch 272..... 70
Ruckman *v.* Cory, 129 U. S. 387..... 34

The Santissima Trinidad, 7 Wheat. 283..... 57
The Scotland, 105 U. S. 24..... 38, 44

PAGE

Scott's Hague Peace Conference, Vol. 2, pp. 3–5, 81, 285, 369 16
Snow *v.* United States, 118 U. S. 346 13
South Carolina *v.* Seymour, 153 U. S. 353 .... 10, 13
Spaight, J. M., War Rights on Land, Chaps. XI, XII 101
Sprott *v.* U. S., 20 Wall. 459 78
State of Yucatan *v.* Argumedo, 92 Misc. (N. Y.) 547 ..... 22, 106
Sweringen *v.* St. Louis, 185 U. S. 38 13

Taylor *v.* Taft, 203 U. S. 461 ..... 13, 14
Thorington *v.* Smith, 8 Wall. 1 89
The Three Friends, 166 U. S. 1 22
Torrance *v.* Third National Bank, 70 Hun (N. Y.) 44 ..... 39, 44, 45
Ex parte Toscano, 208 Fed. 938 ..... 55, 98
Tyler *v.* DeFrees, 11 Wall. 331, 347 66
Tyler *v.* Judges of the Court of Registration, 179 U. S. 405 ..... 35, 37

Underhill *v.* Hernandez, 168 U. S. 250 .21, 27, 88, 106
Union Naval Stores *v.* U. S., 202 Fed. 491 42
U. S. *v.* Klein, 80 U. S. (13 Wall.) 128 ..... 66, 77
U. S. *v.* Lynch, 137 U. S. 280 13
U. S. *v.* Padelford, 9 Wall. 531 75
U. S. *v.* Palmer, 3 Wheat. 610 ..... 22, 56

Van Doren *v.* Pennsylvania R. Co., 93 Fed. 260 ..... 39, 44
Voshefskey *v.* Hillside Coal & Iron Co., 21 App. Div. (N. Y.) 168 ..... 39, 44

Wheaton's International Law, 4th Eng. Ed., p. 543 87
Whitford *v.* Panama R. Co., 23 N. Y. 465 .... 39, 44
Whitney *v.* Robertson, 124 U. S. 190 15
Williams *v.* Wm. B. Scaife & Sons Co., 227 Fed. 922 ..... 39, 44

Young *v.* U. S., 97 U. S. 39 83

Supreme Court of the United States.

HENRY A. OETJEN,
Plaintiff-in-Error,

AGAINST

CENTRAL LEATHER COMPANY,
Defendant-in-Error.

October Term,
1917.
Nos. 268, 269.

BRIEF FOR DEFENDANT-IN-ERROR.

State of the Cause.

A Writ of Error to the Circuit Court of Hudson County, New Jersey, was issued herein on August 8th, 1916 (p. 205).

Defendant-in-error urges that this Court has no jurisdiction of the subject matter, and that the objections and assignments of error are frivolous and palpably insufficient in law; also that the judgment be affirmed on the merits.

The actions here—two in number—were begun on January 22nd, 1914, in replevin, and were tried in the Circuit Court of Hudson County, New Jersey (pp. 35, 14, 16). The goods in issue were at the time of their seizure and replevin in the possession of two different railroads, necessitating two separate actions and writs of replevin. On the

trial the railroads were eliminated by consent and the actions pursued against the defendant Central Leather Company as the only party in interest (p. 22). Both actions were tried together, as they both involved the same facts (p. 22). The case was argued on one record in the Court of Errors and Appeals of the State of New Jersey, and by stipulation is before this Court on one record.

The actions are prosecuted under an assignment (pp. 6, 9, 16, 19). The writs of replevin were issued at the instance of one O'Neill, the original plaintiff, who claimed ownership of the property consisting of hides, on an alleged transfer from the Mexican Hide Company (pp. 5, 6, 9, 16, 19). A reference is made by the plaintiff-in-error to considerable property, including calf skins, hair, etc. (Plaintiff-in-error's Brief, p. 112), but they are not in issue in this action (p. 6). After the assignment and the execution of the writs of replevin, and before the joinder of issue with the original plaintiff, O'Neill, an *ex-parte* order was obtained, adding Oetjen, the plaintiff-in-error herein, as an additional plaintiff in the court of original jurisdiction (pp. 8, 18). Oetjen claimed title by a different assignment, made by Manuel M. Martinez on January 28th, 1914, six days after the beginning of the action by O'Neill (p. 3), while the goods were in the Sheriff's possession on O'Neill's writ of replevin and after the goods had been taken from Martinez's possession (p. 9), who claims to have been the original owner of the replevied property at the time of their alleged seizure. Motions were properly made by the defendant to dismiss the action as to Oetjen, which were denied (pp. 21-22, 56-58, 178, 179). On the trial and at the conclusion of the plaintiff's case and after the defendant's

motion to nonsuit the plaintiffs, a motion was made by the plaintiffs' attorneys to add Martinez as a party plaintiff, which motion was denied (p. 57).

After the joinder of Oetjen as a party plaintiff all claim on behalf of the original plaintiff O'Neill was abandoned. He is not before this Court by the writ of error issued. Motions to dismiss as to O'Neill were denied (pp. 53-54, 56, 58). The Trial Court directed a verdict for the defendant (pp. 179, 180). No objection was made by O'Neill to the direction of a verdict for the defendant by the Trial Court (p. 180). An appeal was taken by the plaintiff-in-error to the Court of Errors and Appeals of New Jersey. This latter Court unanimously affirmed the judgment of the Trial Court (p. 217).

Facts.

The assignor of the plaintiff-in-error, Manuel M. Martinez, claims to be the real party in interest (pp. 30, 47-48, 7, 17). Martinez is and was at the times described in this action a dealer in hides and a resident and citizen of the City of Torreon, State of Coahuila, Mexico (pp. 23, 16). The defendant is a New Jersey corporation (pp. 4, 10). Between September 19th, 1913, and January, 1914, which includes the times of the transactions in issue in this action, civil war prevailed in Mexico. This war was waged between two factions, the Federalists led by Huerta, and the Constitutionalists led by Carranza. This war began in February, 1913, having been precipitated by the act of Huerta in seizing the government on the death of President Madero.

In March, 1913, the Constitutionalists formed a government based on a declaration known as the

"Plan de Guadalupe". A Provisional President and Cabinet were appointed by the Constitutionalists, also governors of states, mayors of towns and cities and judges. Railroads, public schools, post-offices, telegraphs, telephones, courts, jails and police, were established and run by the Constitutionalist Government (pp. 59, 60, 61, 63, 67). This government printed money, which was in circulation throughout their territory, levied taxes, maintained custom houses and an immigration department (pp. 64, 73, 89, 143). In short, the Constitutionalist Government exercised all the functions of a government and maintained excellent order throughout the territory in their possession (pp. 101-109, 112-114, 122, 125, 135-136, 137, 139, 140, 144, 161-165). There was no looting, as interestedly alleged by the plaintiff Martinez (p. 81).

A glance at the record will instantly indicate that when plaintiff-in-error states that Martinez was "informed" that he was on the list of the Constitutionalists to be shot and arrested, that he merely "thought" that he was. There is no evidence showing on what facts his "thought" was based. The record shows that his fears were unfounded, because all those who paid the tax were not molested or any of their property taken (p. 97).

The Constitutionalist Government has since October 19th, 1915, been officially recognized by the Executive Department of the United States Government as the *de jure* government of the Republic of Mexico (Appendix, p. 123). General Villa was a subordinate general under Carranza at the times in issue in this action (pp. 63, 76). On October 1st, 1913, Villa, in the name of the Constitutionalist Government, captured the City of Torreon, up to that time under the control of the Federalists (pp. 79, 63, 76, 27).

As soon as Torreon was captured order was restored, and the Mayor and other officials who had been constitutionally elected at the same time Francesco Madero was elected President, and who had been ousted by the Huertistas, were restored to their offices by the Constitutionalists (pp. 79, 80, 64, 73, 65, 81).

After the capture of Torreon a conference was held between General Villa and his representatives, on the one hand, and the taxpayers and leading citizens of what is known as the Laguna District, including the City of Torreon, on the other hand (p. 93). At the conclusion of the negotiations conducted in the conference—which lasted eight days (p. 94)—it was mutually agreed that a tax of three million pesos be imposed on the citizens of the Laguna District to defray the expenses of the war and to bring about the restoration of orderly government (pp. 81, 82, 83). The Laguna District, including Torreon, consisted of about 125,000 inhabitants (p. 92). Four commissions were appointed by the citizens themselves, composed of the leaders of their number, to equitably distribute the tax amongst the property owners (pp. 82, 83). The said commissions were divided as follows: Industry, Agriculture, Banking and Commerce (p. 82).

Martinez, the real plaintiff herein, was included in the assessment (p. 85). He defaulted in payment and fled the city (pp. 36-37, 39, 96). He admitted that he was aware of an assessment against him. There is credible evidence that he was personally served with a notice of this assessment (pp. 99, 100, 101, 95). On Martinez's default an order was given for the seizure of his property for failure to pay the assessment (pp. 99, 86, 87, 88, 85). This

order had the approval and ratification of General Carranza, then and now the head of the Constitutionalist Government (p. 91, Appendix 1). It is admitted that the goods in suit were purchased by the defendant from the immediate purchaser from the Constitutionalist Government (pp. 53, 55). Martinez claims that the said goods are his property (pp. 36, 47-88, 16, 7, 17, 8, 9). The goods are those replevied in this action.

The goods in issue were sold to the Finnigan-Brown Company, a Texas corporation, defendant's vendor, in January, 1914 (pp. 119, 192, 128-129, 110, 123, 121). At that time the jurisdiction of the Constitutionalist Government extended over a territory whose area aggregated more than 500,000 square miles, equivalent to the area of the United States lying east of the Mississippi and north of the Potomac and Ohio Rivers, and more than sixty-five per cent. of the entire area of Mexico (pp. 62, 65-66, 75, 76, 101-109, 112, 114, 122, 125, 124, 137-140, 144, 161-165). In August, 1914, the Huertistas were completely defeated, and the entire Republic was then under the jurisdiction of the Constitutionalist Government.

Our own government officially recognized that a state of civil war existed in Mexico and it recognized the belligerent rights of the two forces in the struggle. President Wilson, by various messages to Congress, beginning with his special message of August 27th, 1913 (pp. 194-198), and by proclamation and other acts, repudiated the pretensions of Huerta that he was the *de jure* sovereign of Mexico, approved the efforts of the Constitutionalists to oust Huerta from his usurped authority at Mexico City, and correctly predicted the final success of such efforts. At the same time President Wilson

declared the attitude of the United States Government to be that of strict neutrality between the two contending forces in Mexico, and his attitude was thereafter followed, both in spirit and letter, by all the departments of our Government. Soldiers of both the Huertista and Constitutionalist armies were interned when they came across the boundary line into the United States (p. 165). Belligerent rights were accorded to each of the two armies with respect to the importation of munitions of war from this country and with respect to all other matters concerning the relations between the United States and Mexico (pp. 65, 167, 199). Finally, on October 19th, 1915, Mr. Secretary Lansing wrote to the Carranza Ambassador in Washington extending recognition to the *de facto* government of Mexico, of which General Carranza is the executive head, and calling upon the Carranza Government to formally present its diplomatic representatives to our Government at Washington, and stating that reciprocally this Government would send its representatives to the Carranza Government (Appendix, pp. 2, 6, 7). Thus the neutrality contemplated originally and maintained by the executive arm of the United States Government towards the existing strife in the Republic of Mexico, culminated in the official and unbounded recognition by the United States Government of the Constitutionalist faction as the *de jure* government of Mexico.

Further and more detailed facts will be discussed in the various Points hereinafter set forth.

POINT I.

The decision of the State Court here does not deny the validity of any authority exercised under the United States.

Defendant-in-error at the threshold of this cause asserts that this Court is barred from reviewing this case for want of jurisdiction.

In his assignment of errors, upon which the writ of error of this Court is based, plaintiff's assignor claimed several alleged grounds of error in invoking the jurisdiction of this Court, which have now been abandoned. The plaintiff-in-error gained entrance into this court on the assertion of these abandoned alleged errors. But very recently on an application in this Court to advance this cause for argument, these abandoned grounds were reiterated. For the purpose of demonstrating the want of jurisdiction of this Court, defendant-in-error will briefly advert to these assignments of error. Plaintiff-in-error thus summarizes the basis of this Court's jurisdiction:

> "(1) The validity of an authority exercised under the United States, namely the authority of the President and Secretary of State to bind the United States and all citizens and Courts thereof, including the Circuit Court of Hudson County, New Jersey, by their determination as to whether or not organizations or forces set up in the Republic of Mexico by General Carranza or General Villa, or any others acting under or with them, should be recognized as a government or as belligerents or as entitled to the rights of war. The Circuit Court in receiving and acting upon testimony as to political

and military conditions within the Republic of Mexico, did, in fact, deny the validity of the authority of the President and Secretary of State of the United States to bind said Court by their acts in the premises.

"(2) The validity of an authority exercised under the United States, to wit, the authority of the President and Secretary of State to determine and recognize whether a state of civil war existed within the Republic of Mexico, and whether contending forces therein or either of them, should be recognized as Belligerents. The Circuit Court, in finding that a state of civil war existed in Mexico, and that the State Department of the United States had recognized such state of civil war and the belligerency of the Huertistas and Constitutionalists as contending forces, notwithstanding the express declaration of the Secretary of State to the contrary, did deny the validity of an authority of the President and Secretary of State to declare the political policy of the United States in the premises, and the authority of the Secretary of State to define and characterize the political acts of the Government in the above particulars.

"(3) The validity of a treaty or statute of the United States, in that the Hague Convention by its formal adoption by the Governments of the United States and the Republic of Mexico, has become a treaty or statute of the United States and by adoption by the Pan-American Congress has become a treaty between the Governments of the United States and the other American nations participating therein, declared by treaty 'Public International American Law.'"

The authority referred to in the first instance was the authority of the President of the United States and his Department of State to bind the United States and its courts by their determination as to

whether belligerency or sovereignty existed with reference to the Mexican contending forces. Plaintiff-in-error claims that by allowing in evidence in addition to the Proclamations of the President, oral evidence as to the actual conditions in Mexico, in effect it denies the validity of the authority of the United States and the Executive Branch of the Government to bind the Court by their acts on this question. Further, that the Court, in following the Proclamations of the President in determining the status of the contending forces in Mexico rather than the personal letter of the attorney to the Secretary of State to the plaintiff's attorneys giving his views and conclusions on the subject, denied the validity of an authority exercised under the United States. The plaintiff further seeks the jurisdiction of this Court because the Court ruled that the provisions of the Hague Convention Treaty are inapplicable.

In order to confer jurisdiction on this Court, it must not only appear that there is drawn in question the validity of an authority under the United States, but it must appear that the decision of the State Court was against the validity of such an authority. If such a question is involved, and the decision of the State Court is in favor of the validity of such an authority, no Federal question survives.

South Carolina v. *Seymour,* 153 U. S. 353.

In the case at bar it appears affirmatively, both in the decision of the Trial Court and in the opinion of the Appellate Court, that the authority of the United States to determine the status of the Mexican forces was declared valid, and the decision of the Executive Branch of the Government on this question was given full recognition and

effect. The Trial Court at the very outset, in passing on the motion to direct a verdict, said (pp. 179, 57):

> "The question of recognition of sovereignty or belligerency is undoubtedly a political not a judicial one."

But the plaintiff urged, in seeking admission to this Court, that oral testimony of witnesses of actual conditions existing in Mexico at the times involved in this suit tended to deny the validity of the authority of the Executive Branch of the Government to determine this question. The testimony was not received to contradict the authority of the United States in this regard, but was received solely as an aid to the Court in construing the admittedly valid and authorized state papers bearing on the subject (p. 179). The Court's recognition of the authority of the United States on this point is clearly and explicitly set forth in its opinion. The Court said, in deciding the motion for a directed verdict:

> "From the most careful and thoughtful consideration that *I have been able to give to the messages and proclamations of President Wilson, in evidence in these causes, as read and construed and understood by me, with the aid and assistance of the testimony portraying events and conditions in Mexico,* I am brought to a conclusion which I was unable to reach at the time of deciding the motion to nonsuit. I am now brought to the irresistible conclusion that a state of civil war existed in Mexico and that the political department of the United States has recognized a state of civil war therein and has recognized the belligerency of the contending forces, namely the Huertistas

> and the Constitutionalists, and has declared the position of the Government of the United States as to the belligerents to be one of neutrality. I cannot well see how there can be a declaration of neutrality as between this government and the contending forces in Mexico without, as a matter of fact as well as a matter of law, a recognition of belligerency following."

The Court of Errors and Appeals of New Jersey, recognizing the validity of the authority of the United States, said at the very opening of its opinion (p. 213):

> "In cases of this kind the Courts are bound to follow the action of the political branch of the Federal Government where there has been such action (*Jones* v. *United States*, 137 U. S. 202)."

Plaintiff's attorneys had prior to the trial of the action written to the Department of State asking for information regarding the recognition by that Department of belligerency or sovereignty of the Mexican forces (p. 181). The attorney for the State Department replied, giving his views and conclusions (p. 182). This letter, relied on by the plaintiff, was construed in the light of the public papers of the President and of the State Department. Assuming for the moment that the Court misconstrued this letter and the public papers and proclamations, this would not amount to the denial of the validity of an authority under the United States. The construction necessarily assumes their authority and validity. Even though the Court misconstrued the said letters and other papers, the validity of any authority exercised under the United

States is not held invalid so as to confer jurisdiction on this Court.

South Carolina v. *Seymour*, 153 U. S. 353.
United States v. *Lynch*, 137 U. S. 280.
Taylor v. *Taft*, 203 U. S. 461.
Sweringen v. *St. Louis*, 185 U. S. 38.
Johnson v. *New York Life Ins. Co.*, 187 U. S. 491.
Mutual Life Insurance Co. v. *McGrew*, 188 U. S. 291.
Kennard v. *Nebraska*, 186 U. S. 304.
Glenn v. *Garth*, 147 U. S. 360.
Linford v. *Ellison*, 155 U. S. 508.
Cook County v. *Calumet & Chicago Canal Co.*, 138 U. S. 635.
District of Columbia v. *Gannon*, 130 U. S. 227.
Baltimore & Potomac R. R. Co. v. *Hopkins*, 130 U. S. 210.
Snow v. *United States*, 118 U. S. 346.

The Trial Court, commenting upon the oral testimony complained of by the plaintiff-in-error, said:

> "It is relevant, material and competent for the use of the court, together with all other reliable information and facts that may be known and gathered and found by the court *in assisting to construe and determine* the meaning and effect of state papers."

In *South Carolina* v. *Seymour* (*supra*) this Court said:

> "In order to come within this clause the validity and not the construction only of * * *. An authority exercised under the United States must be directly drawn in question."

In *Baltimore & Potomac Railroad* v. *Hopkins* (*supra*) the Court points out clearly the distinction between the construction of the extent of an authority under the United States and the denial of authority. Citing an example, the Court said:

> "Thus in *Commercial Bank of Cincinnati* v. *Buckingham*, 5 How. 317, where a general law had declared all banks liable to pay six per cent. interest on their notes, when they had refused payment on demand, and a subsequent act, incorporating the bank in question, provided for the payment of twelve per cent., and the question was whether the bank was liable to pay eighteen, this court held that the question submitted to and decided by the state court was one of construction and not of validity. There both the prior and subsequent statutes were admitted to be valid under any construction of them, 'and therefore no construction placed by the state court on either of them, could draw in question its validity, as being repugnant to the Constitution of the United States, or any act of Congress.' "

The Court in the above case then reviews numerous authorities. Pointing out the distinction in *Taylor* v. *Taft* (*supra*), it was claimed that the procedure under an admittedly valid statute had not been followed. This Court, denying jurisdiction, said:

> "But this contention did not draw in question the validity of an authority exercised under the United States but the construction and application of regulations of the exercise of such authority."

It, therefore, follows that the State Court did not deny the validity of any authority exercised under the United States. Admitting the validity of the

authority contended, the State Court construed the documents published in furtherance of this authority. This is insufficient to raise a Federal question giving this Court jurisdiction.

POINT II.

The State Court did not deny the authority of any treaty. The plaintiff-in-error was not denied any right under any treaty.

The plaintiff-in-error, as previously noted, invokes the jurisdiction of this Court, asserting that there was drawn in question the validity of a treaty of the United States, to wit, the Hague Convention Treaty. This is the only ground adduced on this appeal. A glance at the record will instantly disclose that this contention will not bear serious argument. The Hague Treaty was not declared invalid. It was merely construed, and as construed held inapplicable. The authorities relied on in the first Point for this distinction are applicable here.

A treaty is primarily a compact between two independent nations.

Edye v. *Robertson,* 112 U. S. 580, 598.
Whitney v. *Robertson,* 124 U. S. 190.

The Hague Convention Treaty is essentially a compact between nations as such, giving rise to no private rights judicially remediable to the citizens of any of the contracting parties. The Convention was called so as to prevent armed conflict amongst

the nations in the conference and to mitigate the hardships of inevitable war.

See letter calling the Conference sent by the Russian Government.

Scott's Hague Peace Conference, Vol. 2, pp. 3-5; *Id.*, Vol. 2, p. 81; *Id.*, Vol. 2, pp. 285, 369.

The provisions of the Treaty relied on by the plaintiff-in-error merely make rules and regulations for conducting war if any should arise between the contracting parties. It regulates international dealings not intranational affairs. The very opening sentence of the Treaty relied on by the plaintiff-in-error demonstrates this fact. The Treaty thus begins:

> "Considering that, while seeking means to preserve peace and prevent armed conflicts *among nations*, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert."

That the provisions of this Treaty are binding only on the contracting parties is shown by Article I of the Treaty relied on by the plaintiff-in-error. The Article is as follows:

> "ARTICLE I.
>
> "The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the 'Regulations Respecting the Laws and Customs of War on Land' annexed to the present Convention."

This conclusion is further fortified by Article II of the same Treaty, which is as follows:

> "ARTICLE II.
>
> "The provisions contained in the Regulations mentioned in Article I are binding only

on the *Contracting Powers,* in case of war between *two or more of them.*

"These provisions shall cease to be binding from the time when, in a war between *Contracting Powers,* a Non-Contracting Power joins one of the belligerents."

If any further demonstration is necessary, it is furnished by Article IV of the said Treaty, which provides as follows:

"ARTICLE IV.

"Non-Signatory Powers are allowed to adhere to the present Convention.

"For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers."

Article XX of Chapter 5 of the Hague Convention of 1907 states:

"The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention."

Various nations signed the compact, including the United States and Mexico. In so far as these two contracting powers are concerned, this Treaty provides that in the event of war between the United States and Mexico, both nations will comply with the rules agreed on by the Treaty. Applying the particular Articles of the Treaty relied on by the plaintiff-in-error, therefore, it is agreed that if Mexico and the United States are at war, each stipulates under Article IV, Chapter 2, relied on by the plaintiff-in-error, that the personal belongings of prisoners of war of the United States shall remain

their property. This stipulation is made by this Government to respect the property of prisoners of war of Mexico in the event that the United States declares war or is at war with Mexico. This Article cannot be deemed to regulate internal conflicts within the boundaries of any one of the contracting parties. Each nation would undoubtedly take the position that it could and would deal with its own citizens without the interposition of any other country.

Burthe v. *Dennis*, 133 U. S. 514.

In the above cited authority, this Court, replying to the contention that a treaty must be construed as relating to the internal affairs of this country, said:

> "To any contention of that kind from a foreign country the government of the United States would probably answer that it was entirely competent to deal with its own citizens and to do justice to them without the interposition of any other country."

Article XXII of the Treaty, relied on by the plaintiff-in-error, provides:

> "The rights of belligerents to adopt means to injure the enemy is not unlimited."

This Article itself indicates that the provisions of the Hague Treaty are applicable only to a warfare carried on between any of the contracting parties.

It is an argument *ad absurdum* to suggest that this nation will attempt to remedy an infraction of a treaty by a foreign nation against its own citizens. It is the most elementary principle of

sovereignty that a nation may deal with its own citizens without intervention of any foreign nation.

Minn. Canal & P. Co. v. *Pratt,* 101 Minn. 197 (112 N. W. 395).

The Supreme Court of that State said:

> "It is, of course, conceded that the courts can give no redress to a party who is injured by the failure of a government to observe the terms of a treaty. A party so injured must look to his government for relief."

The effect of the application of the Hague Convention Treaty to the case at bar would be to sanction the proposition that a Mexican citizen has the right to a review by the American Judiciary of the acts of the Mexican *de facto* executive in imposing a tax on the Mexican citizen for purposes of internal war, and to review the acts of such Mexican executive in imposing a penalty on failure of the Mexican citizen to comply with the tax. That is, our Judiciary would review the acts of a foreign executive. It is fundamental that our Judiciary cannot review the acts of our own Executive.

This Court but very recently, reiterating the independence of the three branches of our Government, namely, the Executive, Judicial and Legislative, said, in *Marshall* v. *Gordon,* 243 U. S. 521, 536:

> "As it is unthinkable that in any case from a power expressly granted there can be implied the authority to destroy the grant made, and as the possession by Congress of the commingled legislative-judicial authority as to contempts which was exerted in the House of Commons would be absolutely destructive of the distinction between legislative, executive and judicial authority which is interwoven in

> the very fabric of the Constitution and would disregard express limitations therein, it must follow that there is no ground whatever for assuming that any implication as to such a power may be deduced from any grant of authority made to Congress by the Constitution."

A fortiori, our Judiciary cannot review the acts of a foreign executive. It follows that the Hague Treaty bears no relevancy to the transactions in issue here.

POINT III.

The United States Government has recognised the Constitutionalists as the *de jure* government of Mexico. Such recognition is retroactive and validates acts performed prior to its public utterance. Construction of the executive documents to determine the existence of the belligerency of the contending forces hence becomes obsolete. Therefore this Court has no jurisdiction of the subject-matter of the action.

The plaintiff sought entrance into the portals of this Court on the ground that the State Court denied an authority exercised under the United States by ruling that the Constitutionalists had belligerent rights.

The Court of Errors and Appeals of the State of New Jersey on the Executive documents before it

ruled that the Executive branch of the Government had recognized the belligerency of the Constitutionalist forces.

Since the rendition of that decision, however, occurrences have transpired which strengthen materially the decision of the New Jersey courts. One of the points in issue—in fact, the basis of the New Jersey Court's determination—was the ruling as to whether or not belligerency should be accredited to the Carranza forces. The New Jersey Courts held that the proclamations and public documents of the Executive Department of the Government led to the irresistible conclusion that this Government had recognized the belligerency of the Carranza forces, and having so recognized them it could not question the acts of these forces as such belligerents. Since that decision, however, the Carranza *de facto* Government of Mexico has been recognized by the United States as the *de jure* Government of Mexico. On October 19, 1915, Mr. Secretary Lansing wrote to the Carranza Ambassador at Washington extending recognition to the *de facto* Government of Mexico, of which General Carranza is the Executive Head, and calling upon the Carranza Government to formally present its diplomatic representative to our Government at Washington, and stating that reciprocally this Government would send its representative to the Carranza Government (Appendix, pp. 2, 3).

This, together with other Executive documents relating to the formal recognition of the Carranza Government, were not issued until after the trial of this action; hence they are not in the record. The Court will, however, take judicial notice of them.

Underhill v. *Hernandez,* 168 U. S. 250.
Jones v. *U. S.,* 137 U. S. 202.

U. S. v. *Palmer,* 3 Wheat. 610.
The Three Friends, 166 U. S. 1.
Maghell v. *Sultan of Jahore* (1894), 1 Q. B. 149.

For convenience of the Court, these documents are annexed at the end of this brief (Appendix I to VII).

This Government has taken further affirmative steps to aid the Carranza Government by issuing a proclamation relating to the exportation of munitions of war to Mexico. The President decreed that it was lawful to send munitions to aid the Carranza Government, in order that it might bring about a termination of the conflict (see Appendix, pp. III to VII).

Subsequently the American Ambassador presented his credentials to General Carranza (*Id.,* p. I).

The recognition accorded to the Carranza forces by the United States Government has been expressly recognized by the courts of the State of New York.

State of Yucatan v. *Argumedo,* 92 Misc. 547.

Referring to this recognition, Mr. Justice Shearn, now sitting in the Appellate Division of the Supreme Court of the State of New York, an intermediate Appellate Court, said (pp. 551, 552):

> "Since March, 1915, the representative of the United States department of state has been instructed to take up various matters affecting the interests of American citizens in Yucatan with the officials of General Carranza as the authorities actually in control of the territory, it being understood by the state department that officials of the state of Yucatan acknowl-

edge the superior authority of General Carranza. Governor Alvarado acknowledges and obeys General Carranza as the head of the federal government of Mexico. This action was begun on October 1, 1915. A few days later, namely, on October 19, 1915, the government of the United States extended recognition 'to the *de facto* government of Mexico, of which General Venustiano Carranza is the chief executive', and the secretary of state notified the representative of General Carranza that 'the Government of the United States will be pleased to receive formally in Washington a diplomatic representative of the *de facto* government as soon as it shall please General Carranza to designate and appoint such representative, and, reciprocally, the Government of the United States will accredit to the *de facto* government a diplomatic representative as soon as the President has had opportunity to designate such representative'."

The Court further added (pp. 552, 553):

"But this political question has been settled, for the time being at least, and at any rate for the purposes of this litigation, by the president of the United States, who has officially recognized General Carranza as the central authority of Mexico. This recognition, as Governor Alvarado holds under and acknowledges the authority of General Carranza, and as the department of state has been instructed to take up matters affecting the interests of American citizens in Yucatan with the officials of General Carranza, clearly involves the recognition by the United States of the authority of General Carranza's governor in Yucatan. Furthermore, coincident with the recognition of General Carranza the president issued a proclamation placing an embargo on the shipment of arms and munitions of war to Mexico, but by a separate order to the secretary of the

> treasury he excepted from the embargo 'all ports of entry in Mexico, except those along the international boundary in the states of Chihuahua and Sonora and all the ports in Lower California', basing this action upon the report of the department of state that in all such ports of entry 'the recognized *de facto* government of Mexico is now in effective control'. Among the ports of entry thus excepted from the embargo is the Port of Progreso, Yucatan, a fact of which the court will take judicial notice."

Regarding the *de facto* Government existing in Mexico on the rights of the parties, the Court said (pp. 553, 554):

> "It is therefore immaterial to inquire whether or not the present recognized government is in accordance with the previous constitution or laws of Yucatan. It is enough that it is now the recognized sovereign, the action by the chief executive of the United States Government conclusively binding this court and all courts in this country. This deprives of any weight whatsoever defendant's contention that his accounting, which he admits he is obligated to make 'to the proper authorities', should be postponed until 'a stable form of government is established'. In view of the action of our government it is merely incumbent upon this court to find that the authorities who directed the bringing of this suit are 'the proper authorities' and that they in fact constitute 'a stable form of government'. Recognition is never accorded until, in the opinion of the executive, the government recognized is stable, and on this political question the opinion of the executive, whether right or wrong, is the only opinion that can be considered. *United States* v. *Palmer,* 3 Wheat. 610; *Williams* v. *Suffolk Ins. Co.,* 13 Pet. 415, 420; *Jones* v. *United States, supra; Pearcy* v.

Stranahan, 205 U. S. 257, 265; *Kennett* v. *Chambers,* 14 How. 38, 49; *Luther* v. *Borden,* 7 *id.* 1, 44; *O'Neill* v. *Central Leather Co.,* 94 Atl. Rep. 789."

The fact that this recognition is retroactive is clearly pointed out in this New York State case, based upon the decisions of this Court. The Court said (p. 554):

> "It makes no difference that the recognition followed by a few days the institution of this action, for the recognition of the Carranza government relates back to its inception and all acts of the plaintiff government of Yucatan, such as the bringing of this action, are ratified."

The Court further said on this point (pp. 554, 555):

> "When a *de facto* government is recognized and becomes the *de jure* government, the recognition relates back to the inception of the government, and it thereupon becomes lawful from the beginning. In *Underhill* v. *Hernandez,* 168 U. S. 250, 253, the court said: 'If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation.'
>
> "See, also, *Murray* v. *Vanderbilt,* 39 Barb. 140, where the question of plaintiff's title rested on the validity of a decree issued by the *de facto* Nicaraguan government before its recognition by the United States. The court held that the subsequent recognition had a retroactive effect to give validity to the decree, as the decree was not void, since it had been enforced *de facto* up to the time of recogni-

> tion. There can therefore be no serious question that this action was instituted and is being maintained by the proper authorities."

The recognition by the Executive branch of the United States Government of the Constitutionalists as the *de jure* Government of Mexico, it thus appears, is retroactive. It is immaterial, therefore, how the State court construed the Executive documents before it. The acts of the Constitutionalists in seizing the property of Martinez, by the recognition of this Government, becomes a lawful and authorized act of the rightful Government of Mexico, which precludes inquiry by our courts.

As the acts complained of are now shown to have been sanctioned by the authorized Government of Mexico, it is immaterial how the State court construed the letter of the Attorney to the State Department, and hence this Court has no jurisdiction.

POINT IV.

Evidence tending to show political and military conditions in the Republic of Mexico at the time in issue was properly admissible. In any event its admission did not prejudice the plaintiff-in-error.

The plaintiff's chief complaint against the judgment sought to be reviewed and the main one upon which he based his claim for entrance into this Court, is that it is founded and based upon ex-

traneous evidence, apart from the executive department of the Government, tending to show actual political and military conditions in the Republic of Mexico. This was the basic grievance depended upon for admission to this Court. It is now abandoned. Defendant submits that the evidence was properly admissible.

Jones vs. *United States,* 137 U. S. 202.
Underhill vs. *Hernandez,* 168 U. S. 250.
Pearcy v. *Stranahan,* 205 U. S. 257.

Assuming it is inadmissible, the judgment can be sustained without its consideration or aid.

The purpose of the evidence is to enable the Court to better understand the Executive proclamations and documents and to give the Court the evidentiary probative facts which resulted in the conclusions contained in the said Executive documents. The evidence is admissible to inform the conscience of the Court. As the Trial Court said:

> "It is relevant, material and competent for the use of the Court, together with all other reliable information and facts that may be known and gathered and found by the Court in assisting to construe and determine the meaning and effect of state papers" (p. 179).

The Presidential messages and documents in a large measure assume knowledge of the facts discussed. The particular person representing the Court has actually only the superficial and undependable hearsay knowledge of these facts contained in the daily press. These, of course, do not possess that stability required as the foundation of a judgment.

The extraneous evidence taken presented to the Court the actual condition of affairs in Mexico by

persons having knowledge. The Court was informed by perfectly reliable evidence (p. 164) that shortly after the death of President Madero and the seizure of the Government of Mexico by Huerta, the Constitutionalists made a declaration of war against the Huertistas and founded their Government upon the Plan de Guadalupe, which was promulgated in the State of Coahuila on March 26, 1913 (Deft.'s Exs. D-1, D-1*a*, pp. 185-187, 60). The Court is informed by this document of the usurpation by Huerta contrary to the laws and Constitution of Mexico and the repudiation of the usurper's acts. The Court is further informed that the Constitutionalists have duly designated Carranza as their Commander-in-Chief and the Executive Head pending the establishment of peace (p. 59). One of the Constitutionalists' cabinet officers testified as to the history, extent and functions of the Constitutionalist Government (pp. 59, 60, 61). His own duties are set forth in a decree (Exs. D-2, D-2*a*, pp. 60, 187-190). The decree recites that it is necessary to organize a cabinet in all branches because the Constitutionalists control the greater part of Mexico. It is shown by the testimony of this cabinet officer that General Carranza had previously been Governor of the State of Coahuila. He was elected when President Madero was elected (p. 66). As Governor of Coahuila, Carranza had organized troops during the Presidency of Madero (p. 67). Upon the *coup d'etat* of Felix Diaz and Huerta, these troops were sent to Mexico City to protect President Madero, and after the death of the President all of these troops joined the Constitutionalists (pp. 68, 69). General Carranza was named as head of the Constitutionalists because he was the

first one who came out in defense of the law to defend it from violation (pp. 67, 68).

The Constitutionalist armies operating in various parts of the Republic were under the command of various generals, all subject to the orders of General Carranza (p. 63).

The Constitutionalists established a Central Government for Secretaries of Foreign Relations, of Government, of War, of Communications and of Agriculture (p. 60). They also established State Governments (p. 62), and City Governments with mayors and judges, the latter generally being civilians (p. 63). General Chao was Governor of Chihuahua on January 1, 1914 (p. 62); and, as has been stated, General Carranza was the Constitutionalist Governor of the State of Coahuila, and Constitutional order was preserved in the State of Sonora (p. 63). As rapidly as the Constitutionalists gained control, they established post offices and Government schools; they operated the railroads, telegraphs and telephones there; government money was everywhere in circulation (pp. 63, 64). The territory governed by the Constitutionalists has increased from the beginning of the revolution (p. 66). In October, 1913, the Constitutionalists possessed all of the State of Sonora, except the port of Guaymas; all of the State of Durango; all of the State of Zacatecas, except the capital; all of the State of Sinaloa, except Mazatlan; parts of the States of Tamaulipas, Coahuila and Chihuahua (pp. 61, 62). The total area in square miles of the States of Sonora, Durango, Zacatecas and Sinaloa, is 170,904, the equivalent in area of the Eastern and Middle States.

On January 1, 1914, and at the time of the sale to the defendant's vendor of the goods in issue, the

Constitutionalists had conquered most of the territory in the States of Vera Cruz, San Luis Potosi, Zacatecas, Aguascalientes, Pueblo, Morelos, Guerrero, Michoacan and Hidalgo, with the exception of the capitals. They also had the States of Chihuahua, Sonora, except the port of Guaymas, Sinaloa, except the port of Mazatlan, and all of Durango. They also had most of the other frontier States, Coahuila, Nuevo Leon and Tamaulipas (pp. 65, 66).

The total area in square miles of these States is 507,970 (Ex. D-5), almost exactly the equivalent in area of all of the United States lying East of the Mississippi and North of the Potomac and Ohio Rivers. The total of all Mexico is 765,535 square miles (Ex. D-5). So that allowing for the capitals and parts in which the Huertistas still operated, the Constitutionalists governed at that time far more territory than the Huertistas; and even in the States not named there were Constitutionalist forces (pp. 65, 66). Between the dates of the areas given above, the Constitutionalists captured Torreon and the hides in issue were seized and were sold. When the cabinet officer's testimony was taken here, the Constitutionalists had conquered seven-eighths of Mexico (pp. 65, 66), and had communication throughout the general republic (p. 73), but they did not have the City of Mexico (p. 65). Subsequently and while testimony in this case was being taken, the Constitutionalists acquired the City of Mexico (p. 90).

At the times in issue, General Villa was Commander-in-Chief of the Division of the North of the Constitutionalist Army (pp. 76, 79). In October, 1913, his army had possession of the Southern part of the State of Chihuahua, which included the

cities of Parral, Santa Rosalia and Jiminez (p. 76). On October 1, 1913, these armies had captured the cities of Torreon and San Pedro, in the State of Coahuila, and all the territory between, which had been defended by the Huertistas. Various other captures were made, during all of which time General Villa was acting under the orders of General Carranza (Ex. D-6, pp. 76, 77).

The facts peculiarly pertinent to the issue here and relating to the seizure complained of by the plaintiff are clearly set forth by a member of the Department of Finance of the Constitutionalist Government and President of a State Bank under the Constitutionalist Government (pp. 79, 90). When General Carranza's Army of the North captured the Laguna District in Coahuila, which included San Pedro and Torreon, the Constitutionalists established a complete government, including a mayor, board of aldermen and judges, by reinstating the persons who had been constitutionally appointed under President Madero's Government (pp. 79, 80). A police force was installed, the public schools were opened and the saloons were closed, and all industries were operated (pp. 80, 81).

The establishment of government and the maintenance of order by the Constitutionalists is further corroborated by the testimony of various other witnesses (pp. 81, 101-109, 112-114, 122, 125, 135-136, 137-142, 144, 161-165).

The existence of this civil war and the establishment of government by the Constitutionalists in the City of Torreon are admitted by Martinez himself (pp. 34, 25, 27). Martinez admitted that he was a Huertista, having held a municipal position under the Huerta administration (p. 33). He

stated that Torreon had been captured by the Constitutionalists in October, 1913, by the Carranza Government (p. 34). He stated that the *war* began in March, 1913 (p. 34). When the Constitutionalists entered Torreon, he stated they took charge of the municipal government (pp. 34, 35). On October 5, 1913, Martinez obtained a passport from the the representatives of the Constitutionalist Government (pp. 39, 40). Martinez referred to his desire to get away from the scene of war (p. 39). He dwelt upon the fact that he had attempted to avoid seizure of his goods by sending them to San Pedro (pp. 40-45).

It cannot be gainsaid but that in the light of this evidence that "the territory controlled by the provisional authorities of Mexico City has grown smaller, not larger" (p. 195), is clearly more readily understood and construed. Again when the Executive says in his message of August 27, 1913, that a settlement has been reached upon the following conditions: "(*a*) Immediate cessation of fighting throughout Mexico, a definite armistice solemnly entered into and scrupulously observed". This assumes that there is fighting. The meaning of the President is immediately grasped when this message is perused with the evidence objected to before the Court. Again, when the President says, "The situation must be given a little more time to work itself out", is more clearly understood in the light of the evidence of actual conditions.

When the President in his annual message of December 2, 1913 (Ex. D-17, pp. 198, 199) says: "He has forfeited the respect and the moral support even of those who were at one time willing to see him succeed. Little by little he has been completely isolated. By a little every day his

power and prestige are crumbling and the collapse is not far away. We shall not, I believe, be obliged to alter our policy of watchful waiting" it is more clearly understood in the light of the evidence objected to.

When the President refers in his proclamation of February 3, 1914 (Ex. D-18, pp. 199, 200), to a change of conditions in Mexico, his meaning is more clearly understood with the evidence objected to as an auxiliary. How much clearer the expression in the President's special message to Congress of April 20, 1914 (Ex. D-19, pp. 200-202), "Mexico is torn by civil strife", is made when the Court has the benefit of the testimony of parties having knowledge of the actual conditions in the Republic of Mexico. The facts upon which the conclusions of the Executive are reached are then before the Court, which enables the Court to construe the Executive documents with precision and accuracy.

But, however, even if the evidence complained of is disregarded, the Executive messages themselves show clearly the recognition of the belligerent rights of the contending forces. Both parties moved for a direction of a verdict in the Trial Court (p. 178), both parties admitting that there was no issue of fact to be determined by the jury.

In *Beuttell* v. *Magone,* 157 U. S. 154, the Court said:

> "As, however, both parties asked the court to instruct a verdict, both affirmed that there was no disputed question of fact which could operate to deflect or control the question of law" (p. 157).

The primary question of law decided by the Court was whether the Executive branch of the

Government had recognized the belligerent rights of the contending parties.

We have previously pointed out that that conclusion of law can be drawn from the Executive documents. Assuming, therefore, that the evidence was erroneously admitted, it was a harmless error that could not change the result, and hence should be disregarded.

Chubb v. *Upton,* 95 U. S. 665.
Moses v. *U. S.,* 166 U. S. 571.
Cooper v. *Coates,* 21 Wall. 105.
Motes v. *U. S.,* 178 U. S. 458.
Lancaster v. *Collins,* 115 U. S. 222.
Ruckman v. *Cory,* 129 U. S. 387.
Mammoth Min. Co. v. *Salt Lake Foundry & Machine Co.,* 151 U. S. 447.

Furthermore, as we have previously pointed out, the Constitutionalist Government has been recognized by the United States as the *de jure* Government of Mexico. This recognition, as we have seen, acts retrospectively. The reception of the evidence, therefore, could not be prejudicial. If the evidence could not be prejudicial and if the decision of the Court is warranted without its aid or consideration, it results in no harm to the plaintiff-in-error. This being so, his basis for invoking the jurisdiction of this Court falls.

POINT V.

The Federal rights asserted in this cause do not belong to the plaintiff-in-error; hence, this Court has no jurisdiction.

Tyler v. *Judges of the Court of Registration,* 179 U. S. 405.
Conde v. York, 168 U. S. 642.
DeLamar's Nevada G. M. Co. v. *Nesbitt,* 177 U. S. 523.
Giles v. *Little,* 134 U. S. 645, 650.
Owings v. *Norwood,* 5 Cranch. 344.
Lampasas v. *Bell,* 180 U. S. 276.

It has been repeatedly held in this Court that to confer jurisdiction the Federal right claimed must belong to the plaintiff-in-error. Assuming for the moment that such right exists, the record discloses that it does not belong to the plaintiff-in-error. This suit is prosecuted by one Oetjen, the plaintiff-in-error. Martinez testified that up to the time he came to New York he had done nothing to part with his title in these goods (p. 30). He repeatedly testified during the course of the trial that he still owned the goods in issue, that he had not sold them to the plaintiff-in-error or to any one else, and he further emphasized that he owned the goods by saying that he owned all of them and that no one else had any interest in them except him (pp. 47, 48, 49). The fact that Martinez still owned the property is evidenced by the motion of the plaintiff-in-error to allow the real party in interest to become a party plaintiff, which motion was denied (p. 57).

In *Conde* v. *York* (*supra*) Chief Justice Fuller thus states the rule:

> "In order to give this court jurisdiction to review the judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be a title or right of the plaintiff in error and not a third person only; and the statute or authority must be directly in issue. In this case the controversy was merely as to which of the claimants had the superior equity in the fund; the statute was only collaterally involved; and plaintiffs in error asserted no right to the money based upon it."

In *Giles* v. *Little* (*supra*) the Court said: (p. 650):

> "But it is certain that neither had nor claimed any interest in the title acquired by Miles under those judgments. It is well settled that, in order to give this court jurisdiction to review a judgment of a state court against a title or right set up or claimed under a statute of, or an authority exercised under, the United States, that title or right must be one of the plaintiff in error, and not of a third person only. *Owings* v. *Norwood,* 5 Cranch. 344; *Montgomery* v. *Hermandez,* 12 Wheat. 129, 132; *Henderson* v. *Tennessee,* 10 How. 311; *Hale* v. *Gaines,* 22 How. 144, 160; *Long* v. *Converse,* 91 U. S. 105. The title set up by the defendants being that of a third person, in which they have no interest, the writ of error is dismissed for want of jurisdiction."

In *Lampasas* v. *Bell* (*supra*) the rule is thus stated in the syllabus:

> "The objection of the unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance."

In *Tyler* v. *Judges, etc.* (*supra*) the Court said on this point (p. 406):

> "The prime object of all litigation is to establish a right asserted by the plaintiff or to sustain a defence set up by the party pursued. Save in a few instances where, by statute or the settled practice of the courts, the plaintiff is permitted to sue for the benefit of another, he is bound to show an interest in the suit personal to himself, and even in a proceeding which he prosecutes for the benefit of the public, as, for example, in cases of nuisance, he must generally aver an injury peculiar to himself, as distinguished from the great body of his fellow citizens.
>
> "The very first general rule laid down by Chitty, Pleading, p. 1, is that 'the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative'. An action on contract (p. 2) 'must be brought in the name of the party in whom the legal interest in such contract was vested', and an action of tort (p. 69) 'in the name of the person whose legal right has been affected, and who is legally interested in the property at the time the injury thereto was committed'. As stated by another writer: 'No one can be a party to an action if he has no interest in it. A plaintiff cannot properly sue for wrongs that do not affect him, and on the other hand, a person is not properly made a defendant to a suit upon a cause of action in which he has no interest, and as to which no relief is sought against him'. In familiar illustration of this rule, the plaintiff in an action of ejectment must recover upon the strength of his own title and not upon the weakness of the defendant's, who may even show title in a third person to defeat the action.
>
> "Actions instituted in this court by writ of error to a state court are no exception to this

> rule. In order that the validity of a state statute may be 'drawn in question' under the second clause of section 709, Rev. Stat., it must appear that the plaintiff in error has a right to draw it in question by reason of an interest in the litigation which has suffered, or may suffer, by the decision of the state court in favor of the validity of the statute. This principle has been announced in so many cases in this court that it may not be considered an open question."

Furthermore, it clearly appears that at the time of the commencement of the action the plaintiff-in-error had no relation to it. The alleged assignment to this plaintiff was not made until after the service of process on behalf of O'Neill and after the goods had been replevied and while they were in the custody of the Sheriff. The goods were replevied on January 22nd, 1914 (p. 5). The assignment to this plaintiff was not made until January 28th, 1914 (p. 181). Having been made after the commencement of the action, it is ineffective for the prosecution of the suit.

Canfield v. *McIlwaine,* 32 Md. 94.
Haile v. *Richardson,* 2 Strob. 114; 33 So. Car. Law, 144.

POINT VI.

The taking or conversion, if any, occurred in the Republic of Mexico.

Northern Pacific R. R. Co. v. *Babcock,* 154 U. S. 190.
The Scotland, 105 U. S. 24.

Williams v. *Wm. B. Scaife & Sons Co.*, 227 Fed. 922.

International Nav. Co. v. *Lindstrom*, 123 Fed. 475 (Second Circ.).

Van Doren v. *Pennsylvania R. Co.*, 93 Fed. 260.

The Lamington, 87 Fed. 752.

Northern Pacific R. Co. v. *Mase*, 63 Fed. 114.

The Egyptian Monarch, 36 Fed. 773.

Phillips v. *Eyre*, L. R. 6 Q. B. 1, 28.

Leonard v. *Columbia Steam Navigation Co.*, 84 N. Y. 48.

McDonald v. *Mallory*, 77 N. Y. 546.

Whitford v. *Panama R. R. Co.*, 23 N. Y. 465.

Voshefskey v. *Hillside Coal & Iron Co.*, 21 App. Div. 168.

Torrance v. *Third National Bank*, 70 Hun, 44.

The action is in replevin. Replevin is an action *ex delicto* and is a remedy provided for a tortious taking of property.

Chaffee v. *U. S.*, 18 Wall. 516.

The plaintiff bases his claim on an alleged tortious taking, claiming that they were stolen from him (p. 6).

It is a well settled rule that the time of the conversion is the day when the goods were wrongfully taken.

38 *Cyc.* 2087.

It is equally well settled that the place of the wrongful taking is to be deemed the place of con-

version and not that of a subsequent demand and refusal, nor the place of sale of the converted goods.

38 *Cyc.* 2094.

Thus it has been said:

> "If the acts of the parties impose no obligations on the one hand and confer no rights on the other, where they occur, no good reason is apparent why they should spring into active existence the moment the parties pass into another jurisdiction, where if they occurred therein such relative rights and obligations would have resulted. An act should be judged by the law of the jurisdiction where it was committed; the party acting or omitting to act must be presumed to have been guided by the law in force at the time and place and to which he owed obedience; if his conduct according to that law violated no right of another, no cause of action arose, for actions at law are proper to redress violated rights."
>
> 38 *Cyc.* 545, 546.
>
> *Alexander* v. *Pennsylvania Co.*, 48 Ohio St. 623, 636; 30 N. E. 69.

The rule above stated is too well settled to warrant any extended discussion.

The uncontradicted testimony in this case is that the possession of the goods was taken by the defendant's vendor in Juarez, Mexico. If any acts of wrong were involved in that taking, they must be governed by the laws of Mexico. A representative of the Constitutionalist Government of Mexico called upon the plaintiff with a view to taking up negotiations looking to a sale of the goods in issue to the defendant's vendor (pp. 128, 148). The testimony is uncontradicted that all the conferences relating to this purchase occurred in the Quartel

Generale in Juarez, Mexico (pp. 128, 129, 121, 148, 150-153). When the deal was consummated a bill of sale was signed and delivered by the officers of the Constitutionalist Government to the defendant's vendor in Juarez, in Mexico (pp. 121, 128-129, 134). Payment for these goods was made by the defendant to the Constitutionalist Government at the Quartel Generale in Juarez, in Mexico (pp. 129, 121, 157). Finally, the manual delivery of these goods by the Constitutionalist Government to the defendant's vendor was made at the railroad station in Juarez, Mexico (pp. 129, 132, 121, 153-155). It will be recalled that the cars in issue were at a railroad siding in Juarez, Mexico. The plaintiff claims, and the defendant's testimony corroborates the fact, that these cars were locked (pp. 121, 15). Both sides agree on the identity of the cars (pp. 130, 155). The testimony is that Mexican Constitutionalist soldiers and laborers of the defendant's vendor broke open the padlocks and took possession and counted the wares purchased at Juarez, in Mexico (p. 153). The transfer of these goods from the original cars to cars provided by the defendant was made in Juarez, Mexico (p. 153). The goods were then delivered to the railroad by the defendant's vendor in Juarez, in Mexico, and shipped from that point in bond for a European port (p. 133). They were released from bond and withdrawn for domestic consumption at New York (pp. 133, 159, 15). Finally the plaintiff in error himself says in his brief (p. 14): "The transactions closed at Juarez on January 7th."

The plaintiff contends, however, that the defendant or the defendant's vendor are not *bona fide* purchasers. We submit, in the first instance, that the defendant had not any knowledge of the pre-

vious title of the goods, and in the second, that *bona fides* is no element of a cause of action in conversion. The uncontradicted testimony is that the defendant here or his vendor had no knowledge at the time of the purchase of these goods to whom they belonged (p. 131, S. M. 137). They dealt directly in a business manner with the confiscation office of the Constitutionalist Government (pp. 149, 115, 123). The defendant's witnesses testified that, like other business houses, the hides were purchased from any one who had them to sell (pp. 149, 115, 123).

It is well settled that a wilful or corrupt intent or act is not an essental element of a cause of action in conversion.

38 *Cyc.* 2008.

The good or bad faith of the converter is immaterial to the cause of action.

Graham v. *Purcell,* 126 App. Div. (N. Y.) 407.

The rule was also recognized in the decision of the Circuit Court of Appeals for the Fifth Circuit in *Union Naval Stores* v. *U. S.,* 202 Fed. 491.

Plaintiff-in-error attempts to indulge in many fanciful fictions to escape the force of these undisputed facts. If the plain uncontradicted facts in this case can be inundated by such fictions, no commercial transactions would be safe. The agreement was a plain sale in Juarez, Mexico. The purchaser was not obligated to obtain the purchase price of the merchandise at any particular place as claimed by the plaintiff-in-error (p. 18, Plaintiff's Brief).

The sole reason actuating the witness Brown in journeying to Juarez to consummate the trans-

action was to satisfy himself that he was dealing with responsible parties. In any event, regardless of the reason, the transaction was consummated in Juarez and must be governed accordingly.

The defendant-in-error has thus far discussed this case as if the conversion occurred when the goods were delivered to the Finnigan-Brown Company on their purchase from the Constitutionalist Government at Juarez, Mexico. The acts of the Finnigan-Brown Company must be judged solely by what they did on taking over the possession of these goods on their sale to them at Juarez, Mexico. If, however, the conversion is to be deemed the original taking from the possession of Martinez, it is admitted that the taking occurred in the Republic of Mexico. The plaintiff-in-error claims that the said goods were "stolen" from his possession in transit from Torreon to San Pedro in the Republic of Mexico (pp. 6, 16, 36, 45-46, 47, 87, 8-9, 29, 45-46) (Plaintiff's Brief, p. 5).

Plaintiff's method of overcoming this testimony is an attempt to change the testimony and the translations thereof to suit his own ends! (Plaintiff's Brief, p. 17).

POINT VII.

Plaintiff having failed to prove that the acts complained of were tortious at the place where they occurred, no recovery can be had.

American Banana Co. vs. *United Fruit Co.*, 213 U. S. 347, and cases cited.

Northern Pacific R. R. Co. v. *Babcock*, 154 U. S. 190.

The Scotland, 105 U. S. 24.
International Nav. Co. v. *Lindstrom*, 123 Fed. 475 (Second Circ.).
Van Doren v. *Pennsylvania R. Co.*, 93 Fed. 260.
The Lamington, 87 Fed. 752.
Northern Pacific R. Co. v. *Mase*, 63 Fed. 114.
The Egyptian Monarch, 36 Fed. 773.
Leonard v. *Columbia Steam Navigation Co.*, 84 N. Y. 48.
McDonald v. *Mallory*, 77 N. Y. 546.
Whitford v. *Panama R. R. Co.*, 23 N. Y. 465.
Voshefskey v. *Hillside Coal & Iron Co.*, 21 App. Div. 168.
Torrance v. *Third National Bank*, 70 Hun, 44.
Williams v. *Wm. B. Scaife & Sons Co.*, 227 Fed. 922.

In *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 356, this Court holds that the general and most universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act was done. The Court further held that the only exception to this rule is:

> "No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law, and keep to some extent the old notion of personal sovereignty alive."

The exception here noted applies to cases where the act in question was between citizens of the country in which the action was brought.

This rule has been established from the earliest times. In *Phillips* v. *Eyre,* L. R. 6 Q. B. 1, 28, the Court said:

> "As a general rule, in order to found a suit in England for a wrong alleged to have been committed abroad, two conditions must be fulfilled. First, the wrong must be of such a character that it would have been actionable if committed in England. * * * Secondly, the act must not have been justifiable by the law of the place where it was done."

Torrance v. *Third National Bank,* 70 Hun (N. Y.) 44, was an action for a conversion, as is the case at bar. The Court held that inasmuch as the acts complained of did not constitute a conversion at the place where they occurred, no action could be founded thereon, even though such acts would constitute a conversion under the *lex fori.* The conversion claimed there consisted in the issuance of an execution by the defendant against the property belonging to the plaintiff. The execution was issued in the State of Pennsylvania. Referring to the law governing the situation, the Court said:

> "The rights of the parties to this action must be determined by the laws of the State of Pennsylvania, where the personal property was situated at the time of the alleged conversion thereof by the defendant (*Green* v. *Van Buskirk,* 5 Wall. 307; 7 *id.* 139). This proposition has been deemed to be undoubted since the decision of the Supreme Court in the last-cited case, and which has been often referred to and cited in other cases, and its doctrine reaffirmed in *Huntington* v. *Attrill* (146 U. S. 666)."

We again quote from *Alexander* v. *Pennsylvania Co.,* 48 Ohio St. 623, 636, 30 N. E. 69:

> "If the acts of the parties impose no obligations on the one hand and confer no rights on

> the other, where they occur, no good reason is apparent why they should spring into active existence the moment the parties pass into another jurisdiction, where if they occurred therein such relative rights and obligations would have resulted. An act should be judged by the law of the jurisdiction where it was committed; the party acting or omitting to act must be presumed to have been guided by the law in force at the time and place and to which he owed obedience; if his conduct according to that law violated no right of another, no cause of action arose, for actions at law are proper to redress violated rights."

The act of seizure in the case at bar which the plaintiff claims was tortious was an act of the Constitutionalist Government of Mexico with reference to the property of citizens of Mexico, so that it is clear that the question whether that act was tortious is to be governed solely by the law of Mexico.

The decision of this Court cited is also authority for the proposition that the acts done by the Constitutionalist Army were presumptively done by the authority of the Constitutionalist Government:

> "The acts of the soldiers and officials of Costa Rica are not alleged to have been without the consent of the government and must be taken to have been done by its order. It ratified them, at all events, and adopted and keeps the possession taken by them."
>
> *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 359.

The plaintiff has shown no law tending to hold that the acts of the defendant's vendor in purchasing the goods from the Constitutionalist Government or the acts of the Constitutionalist Government in seizing the goods from Martinez were tor-

s or actionable. As above noted, a presumption avor of the validity of these acts exists. The ls were sold under the authority of the Consti- onalist Government. The acts of the Govern- t in making the seizure and the subsequent sale e adopted and ratified by General Carranza, the l of the Government (p. 91). It appears from testimony of the witness Gonzales, a Mexican yer, that if the goods in issue were seized, the ure was made in accordance with the law of xico (pp. 117-119). There is no statute in exist- e on the subject, but the seizure as described by witness was in accordance with the unwritten common law of Mexico.

POINT VIII.

The Executive branch of the United ates had declared that a state of civil ar existed in Mexico during the times issue carried on between the Consti- tionalists and Huertistas, and had clared the policy of the Government the United States as one of neutrality tween the contending factions. The xecutive branch of the United States overnment had recognized the belliger- ent rights of the Constitutionalists.

Defendant will now discuss the rights of the par- s in the light of the situation as it existed at the nes in issue in this action. We will take up the cussion of the rights of the parties without con- lering the subsequent recognition by this Govern-

ment of the Carranza Government as the *de jure* Government of Mexico and its retrospective effect. The defendant submits that assuming, though not admitting, that such recognition did not act retrospectively, the defendant was entitled to a direction of a verdict on the acts of the Executive branch of the Government as they existed at the time of the trial.

The determination of the status of foreign countries belongs to the domain of the Executive branch of the Government. The judiciary is bound by the stand taken, if any, by the Executive branch of the Government.

Jones v. *U. S.*, 137 U. S. 202.

The appellant affirmatively pleaded this rule. The Presidential messages and proclamations leave no doubt that the executive branch of this Government recognized the existence of civil war in Mexico and recognized the belligerent rights of the contending forces. The defendant will briefly review the documents on which it relies for this assertion. The first Presidential message dealing with the subject was President Wilson's special message to Congress on August 27, 1913 (Ex. D-16, pp. 194-198). In this message the President informs Congress that Huerta had not made good his claim to be the legitimate President of Mexico, and referring to the progress of the revolution, that the territory controlled by him had "grown smaller, not larger". After reviewing the deplorable conditions existing in Mexico, President Wilson makes definite suggestions which he believes will terminate hostilities. These suggestions are as follows: (*a*) Immediate cessation of fighting throughout Mexico, a definite armistice solemnly entered into and scrupulously

observed; (*b*) security given for an early and free election in which all will agree to take part; (*c*) the consent of General Huerta to bind himself not to be a candidate for election as President of the Republic at this election; and (*d*) *the agreement of all parties* to abide by the results of the election and co-operate in the most loyal manner in recognizing and supporting the new administration. The President then points out that the proposals above enumerated were rejected by the Huertistas (p. 385). He adds that the rejection, his belief is, was due to a misunderstanding. The President then adds, referring to the Huertistas:

> "The effect of this unfortunate misunderstanding on their part is to leave them singularly isolated and without friends who can effectually aid them. So long as the misunderstanding continues, we can only await the time of their awakening to a realization of the actual facts. We cannot thrust our good offices upon them."

The President, then sanctioning the continuation of the revolution, adds:

> "The situation must be given a little more time to work itself out in the new circumstances and I believe that only a little while will be necessary. * * * The actual situation of the authorities at Mexico City will presently be revealed. Meanwhile, what is it our duty to do? Clearly, everything that we do must be rooted in patience and done with calm and disinterested deliberation. Impatience on our part would be childish, and would be fraught with every risk of wrong and folly. We can afford to exercise the self-restraint of a really great nation, which realizes its own strength and scorns to misuse it."

The President then adds this significant statement;

> *"It is now our duty to show what true neutrality will do to enable the people of Mexico to set their affairs in order again* and wait for a further opportunity to offer our friendly counsels."

The President then adds:

> "While we wait, the *contest of the rival forces will undoubtedly for a little while be sharper than ever,* just because it will be plain that an end must be made of the existing situation, and that very promptly; and with the *increased activity of the contending factions* will come, it is to be feared, increased danger to the non-combatants in Mexico, as well as to those *actually in the field of battle.* The position of outsiders is always particularly trying and full of hazard where there is *civil strife* and a whole country is upset. * * * For the rest, *I deem it my duty to exercise the authority conferred upon me by the law of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side the border. I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the Republic of Mexico—a policy suggested by several interesting precedents and certainly dictated by many manifest considerations of practical expediency. We cannot in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them."*

Both parties agree that the President has the power to declare the policy of this Government in its foreign relations with other governments. It is plainly obvious from this message, made before the

occurrences in this action had begun, that the President had deliberately declared the policy of the United States as one of strict neutrality between "the contending factions", "those actually in the field of battle", "the sides to the struggle now going on in Mexico", and "the parties to the contest". He declared a general policy of neutrality between them and specifically put a blockade or embargo on the business of sending arms over the border into Mexico, a thing no different, as a recognition of belligerent rights, from the blockade which President Lincoln imposed in the Civil War.

The relations of our Government with Mexico are next discussed by the Executive in President Wilson's annual message to Congress on December 2, 1913 (Ex. D-17, pp. 198-199). This Presidential message shows that the attitude of our Government towards the contending factions in Mexico had evolved beyond the sphere of neutrality. The President severely condemns the Huertistas, one of the contending factions in the civil strife. He says:

> "There can be no certain prospect of peace in America until Gen. Huerta has surrendered his usurped authority in Mexico; until it is understood on all hands, indeed, that such pretended governments will not be countenanced or dealt with by the government of the United States."

The above statement by the President shows a decided leaning to the Constitutionalist faction in Mexico, because the "usurped authority" could only be "surrendered" to the Constitutionalists, which was the only opposing faction. Again repudiating the Huerta faction, the President continues:

> "Mexico has no government. The attempt to maintain one at the City of Mexico has broken down, and a mere military despotism has been

> set up which has hardly more than the semblance of national authority. It originated in the usurpation of Victoriano Huerta, who, after a brief attempt to play the part of constitutional president, has at last cast aside the pretense of legal right and declared himself dictator."

Further repudiating the Huerta faction, the President continued:

> "Even if the usurper had succeeded in his purpose, in despite of the constitution of the republic and the rights of its people, he would have set up nothing but a precarious and hateful power, which could have lasted but a little while, and whose eventual downfall would have left the country in a more deplorable condition than ever. But he has not succeeded.
>
> He has forfeited the respect and the moral support even of those who were at one time willing to see him succeed."

Then suggesting the recognition of the Constitutionalist Government in the near future, the President adds:

> "Little by little he has been completely isolated. By a little every day his power and prestige are crumbling and the collapse is not far away."

The Presidential proclamation of February 3, 1914 (Ex. D-18, pp. 199, 200), leaves no doubt that the attitude of our Government had now developed to the extent of actively co-operating to assist the Constitutionalist forces. The proclamation refers to a previous proclamation made on March 14, 1912, when he declares domestic violence existed in Mexico which made it necessary to prohibit the exportation of arms and munitions of war to Mex-

ico. The President then declares that conditions have since essentially changed, and he revokes the proclamation. At the time this proclamation was made, Vera Cruz had not been occupied by the United States forces, and Tampico was still in possession of Huerta. The Constitutionalists were without any seaport. Huerta, therefore, could be supplied with arms and munitions of war from the whole world except the United States, while the embargo or blockade that had been placed on border shipments had the effect of closing to the Constitutionalists their only door. The President, however, had repudiated the Huertistas, and solely as an aid to the ultimate victory of the Constitutionalists, the President revoked his prior proclamation in order that the Constitutionalists might obtain arms and munitions from the United States.

The next Executive reference to conditions in Mexico is President Wilson's special message to Congress on April 20, 1914 (Ex. D-19, pp. 200-202). The President in this message calls the attention of Congress to various slights and affronts made to representatives of the United States Government by the Huerta faction of the Mexican revolution. During the course of his message, referring to conditons existing in Mexico, the President said: "Mexico is torn by civil strife". Repudiating the Huerta faction, he adds: "Gen. Huerta has set his power up in the City of Mexico, such as it is, without right and by methods for which there can be no justification. Only part of the country is under his control". In favoring the Constitutionalist faction, he adds:

> "If armed conflict should unhappily come as a result of his attitude of personal resentment toward this Government, we should be

> fighting only Gen. Huerta and those who adhere to him and give him their support, and our object would be only to restore to the people of the distracted republic the opportunity to set up again their own laws and their own Government."

A Mexican citizen is here asking the interference of our Court to pass upon the authenticity of an assessment for purposes of continuing the Constitutionalist Government against the Huerta faction so sternly repudiated by the executive branch of our Government. The Mexican citizen is asking our court to review a penalty imposed by the seizure of his property for a default in the payment of such an assessment designedly made. The President said:

> *"The people of Mexico are entitled to settle their own domestic affairs in their own way, and we sincerely desire to respect their right."*

The President's counsel to the Congress in his proclamation should be determinative of this suit.

In response to this Presidential message, Congress passed a resolution authorizing the President in the employment of armed forces to resist the indignities and affronts referred to in the said message. The resolution significantly says:

> "That the United States disclaims any hostility to the Mexican people, or any purpose to make war upon them.

The effect of this resolution is that any armed forces employed would not be against the Government of Mexico, but merely against the Huerta faction. The inevitable inference from this part of the resolution is that the Huerta faction is not the recognized Government of Mexico.

The letters are then presented from the then acting Secretary of State, stating facts in response to inquiries made by the defendant's representative (Exs. D-21, D-22, pp. 203-205). These letters point out that during the conflict in Mexico, this Government maintaining strict neutrality at the outset, interned the soldiers of either or both factions seeking asylum in the United States. They came as soldiers of the Constitutionalist army making the soil of the United States a base for violation of our attitude of neutrality, and they were interned in accordance with our policy of neutrality. They were soldiers of a recognized army engaged in war. To hold them was to recognize the belligerency of their Government.

Ex parte Orozco, 201 Fed. 106.
Ex parte Toscano, 208 Fed. 938.

POINT IX.

The executive documents discussed and analyzed clearly recognizing the existence of civil war in Mexico and the belligerency of the contending parties. The Courts of this country will not sit in judgment on acts of either of the opposing factions.

A number of decisions on this point arose out of the revolt of the Spanish Colonies in the early part of the Nineteenth Century. These have been consistently followed.

In *U. S.* v. *Palmer*, 3 Wheat. 610, the question was whether an act of piracy had been committed. Chief Justice Marshall referring to the South American Civil War said:

> "In such contests a nation may engage itself with one party or the other—may observe strict neutrality—may recognize the new state absolutely—or may make a limited recognition of it. * * * It may be said, generally, that if the government remains neutral, and recognizes the existence of a civil war, its courts cannot consider as criminal those acts of hostility which war authorizes, and which the new government may direct against its enemy."

The Divina Pastora, 4 Wheat. 52, was another case arising out of the revolt against Spain by her colonies, the question arising out of the seizure of a vessel as a prize of war. Chief Justice Marshall says on pages 63 and 64:

> "The decision at the last term, in the case of the *United States* vs. *Palmer*, 3 Wheat. 610, establishes the principle, that the government of the United States, having recognized the existence of a civil war between Spain and her colonies, but remaining neutral, the Courts of the Union are bound to consider as lawful those acts which war authorizes, and which the new governments in South America may direct against their enemy. Unless the neutral rghts of the United States, as ascertained by the law of nations, the acts of Congress, and treaties with foreign powers, are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures, *jure belli*, are regarded the legality of which cannot be determined in the courts of a neutral country."

It is a matter of history that the revolt against Spain was general in South and Central America, including Buenos Ayres, Paraguay, Chili, Peru, Guatemala and Colombia (which then included Venezuela, Ecuador and New Granada). The *Divina Pastora,* for instance, was captured by a vessel fitted out at Buenos Ayres.

The Mexican revolt came about at a subsequent period. President Monroe in his special Message on March 8, 1822 (Am. State Papers, For. Rel. IV, 818), said:

> "As soon as the movement assumed such a steady and consistent form as to make the success of the province probable, the rights to which they were entitled by the law of nations, as equal parties to a civil war, were extended to them. * * * Through the whole of the contest the United States have remained neutral and have fulfilled with the utmost impartiality all the obligations incident to that character."

Another case growing out of the revolt of the Spanish colonies is *The Santissima Trinidad,* 7 Wheat. 283. The capture was made by a vessel under the commission of Buenos Ayres, which had not been formally acknowledged as a sovereign nation by the United States. Justice Story says, in the unanimous opinion, at page 337:

> "The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed a determination to remain neutral between the parties and to allow to each the same rights of asylum and hospitality and intercourse. Each party is, therefore, deemed by us a belligerent nation, having, so far as concerns us, the

> sovereign rights of war, and entitled to be respected in the exercise of those rights. We cannot interfere to the prejudice of either belligerent without making ourselves a party to the contest, and departing from the posture of neutrality. All captures made by each must be considered as having the same validity, and all the immunities which may be claimed by public ships in our ports under the law of nations must be considered as equally the right of each; and as such must be recognized by our Courts of Justice, until Congress shall prescribe a different rule."

Kennett v. *Chambers,* 14 How. 38, arose out of the revolt of Texas against Mexico. The action was brought for the specific performance by General Chambers of the Texan army of an agreement made in September, 1836, to convey land in Texas in consideration of money advanced to him for arming and equipping a force to fight the cause of Texas against Mexico. Chief Justice Taney, writing the opinion, quotes from President Jackson's message to Congress. President Jackson said as shown in the Court's decision:

> "The obligations of our treaty with Mexico, as well as the general principles which govern our intercourse with foreign powers, require us *to maintain a strict neutrality in the contest which now agitates a part of that republic.*"

The Court then quotes further from this message and from a later message in December, 1836, to the effect that the independence of Texas had not been acknowledged. The Court then holds that the contract was illegal and void because it was in direct violation of our duty as a neutral nation.

Chief Justice Taney, speaking of the contract, says (pp. 48, 49):

> "It was made in direct opposition to the policy of the government, to which it was the duty of every citizen to conform. And, while they saw it exerting all its power to fulfill in good faith its neutral obligations, they made themselves parties to the war, by furnishing means to a general of the Texan army, for the avowed purpose of aiding and assisting him in his military operations."

The Court also said, referring to President Jackson's message as to the duty "to maintain a strict neutrality in the contest" (p. 47):

> "And on the very day on which the agreement of which we are speaking was made, (September 16, 1836) Mr. Forsyth, the Secretary of State, in a note to the Mexican Minister, assured him that the government had taken measures to secure the execution of the laws for preserving the neutrality of the United States, and that the public officers were vigilant in the discharge of that duty. Ex. Doc. Vol. I, Doc. 2, page 63-64."

The note of Secretary Forsyth is quoted in Moore's International Digest, vol. 1, pages 176, 177. The Mexican Minister had protested against admitting a vessel flying the Texan flag in the port of New York. Mr. Forsyth in his note said:

> "It is obvious that the exclusion of the vessels of the one party from the ports of the United States, and the admission of those of the other, would be inconsistent with an *impartial neutrality.* * * * The exclusion of the vessels of Texas, while those of Mexico are admitted, is not deemed compatible with the strict neutrality which it is the desire and determina-

> tion of this Government to observe in respect to the present contest between those countries; nor is it thought necessary to scrutinize the character or authority of the flag under which they may sail, or the validity of the commission under which they may be commanded, when the rights of this country and its citizens are respected and observed. In this frank expression of the views and policy of the United States in regard to a matter of so much interest as the war now waging between Mexico and its revolted province, it is hoped that new evidence will be perceived, not only of the consistency and impartiality of this Government in its relations with foreign countries, but of the sincere desire which is entertained by such an exposition of its course, to cherish and perpetuate that friendly feeling, which will see in the scrupulous regard that is paid to the rights of other, and even of rival, parties, one of the surest guarantees that its own will continue to be respected."

President Wilson at the times in issue here pursued precisely the same course as that adopted by President Jackson. The latter did not recognize the *de jure* sovereignty of Texas and President Wilson did not at the times referred to by the plaintiff recognize the *de jure* sovereignty of the Constitutionalists. Both, however, recognized the existence of civil war and declared neutrality as between the contending forces.

Another group of decisions sustaining the contentions that the defendant-in-error here urged are those arising from our own Civil War. Perhaps the leading case is *The Prize Cases,* 2 Black 635. The Court was divided, but the decision has gained added weight because it has been consistently followed and the rulings of the majority constantly reiterated. As the decision is a lengthy one, we will

attempt a summary of the parts pertinent to our inquiry. Justice Grier wrote the prevailing opinion; Justices Wayne, Swayne, Davis, Miller and Field concurred with him. Justice Grier thus defined war: "That state in which a nation prosecutes its rights by force." He then rules that belligerents are independent nations, but it is not necessary that both parties should be acknowledged as independent nations or sovereign states. "A war may exist where one of the belligerents claims sovereign rights as against the other." He adds:

> "A civil war is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents, and the contest a war."

As the laws of war have their foundation in reason, the parties to a civil war usually concede to each other belligerent rights.

> "They exchange prisoners, and adopt the other courtesies and rules common to public or national wars." "As a civil war is never publicly proclaimed *eo nomine* against insurgents, its actual existence is a fact in our domestic history which the court is bound to notice and to know." "This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections." It "sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself, without

waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact." "Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties." On May 13, 1861, the Queen of England issued her proclamation of neutrality, "recognizing hostilities as existing between the Government of the United States of America and certain States styling themselves the Confederate States of America." "This was immediately followed by similar declarations or silent acquiescence by other nations. After such an official recognition by the sovereign, a citizen of a foreign State is estopped to deny the existence of a war with all its consequences as regards neutrals. They cannot ask a court to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race, and thus cripple the arm of the Government and paralyze its power by subtle definitions and ingenious sophisms." The President's proclamation of blockade "is itself official and conclusive evidence to the court that a state of war existed."

The Ambrose Light, 25 Fed. Rep. 408, cited by the plaintiff in the State Court, sustains the defendant. Judge Brown, writing for the Court, said (p. 443):

> "Recognition of belligerent rights may be tacit, implied or express."

He then referred to a letter of our Secretary of State, in which the Secretary said (pp. 443, 444):

> "A state of war has not, in a *formal sense* * * * been recognized by the government of the United States as existing in the United

> States of Colombia; nor have the insurgents now in arms against the latter government been recognized by the United States as belligerents, nor, as far as advised, by the United States of Colombia."

Judge Brown then refers (p. 444) to a note from the Colombian Government to our Department of State declaring certain Colombian ports closed on account of the operations of the rebels at those points. Secretary Bayard replied (p. 444) (by a letter antedating his letter above referred to) declining to acknowledge the closing of the ports, and saying

> "that a decree by a sovereign power closing to neutral commerce ports held by its enemies, whether foreign or domestic, can have no international validity, and no extraterritorial effect in the direction of imposing any obligation upon the government of neutral powers to recognize it."

The Secretary further stated that we would recognize an effective blockade but that the decree by itself was entitled to no respect, and he referred to the repudiation by Great Britain and France during our Civil War of their former position that a belligerent could by mere decree give international effect to the asserted closure of a port. Judge Brown, upon the strength of Secretary Bayard's letter, then says (pp. 444, 445):

> "The attitude assumed by our government in these conclusions is of itself, by necessary implication, a recognition of the existing insurrection as constituting a state of civil war. It assumes that the Colombian government, as respects the ports in question, is a *belligerent;* that the insurgents hold those ports as a *de*

> *facto* power, to the exclusion, for the time being, of the Colombian government and of its sovereign authority; that they are in arms against the latter government; and it is declared that our government will not recognize any attempt by the Colombian government to close these ports by virtue of its own sovereignty as lawful or valid; nor any closure, except by means of an effectual blockade, *i. e.,* by acts of war. In saying that it would recognize no rights of the Colombian government at those ports, except *belligerent* rights, our government implies belligerent rights in those who hold those ports adversely."

Judge Brown concluded that our Government had recognized,

> "by necessary implication, the existing insurrection as a state of war, and the insurgent forces as a *de facto* power, having the counter rights of a belligerent."

Judge Brown in that case went even further than in the case at bar. There were no Presidential messages or proclamations of neutrality which materially tended to clarify the question, nor were there any course of dealings by our Government with the insurgents, such as we have had with the Constitutionalists. There was no recognition of belligerency by internment of soldiers. There was no active aid to the belligerents by proclamations here as to the shipment of arms. We have thus seen that our courts are without jurisdiction to pass upon the validity of a capture in war if the capturing party is a belligerent. The plaintiff, however, seems to deduce from the decisions arising out of the Civil War, that confiscation is invalid unless brought about by legal proceedings. We

will briefly advert to the leading decisions arising out of the Civil War captures.

In considering these decisions, it should be kept in mind that the United States Constitution, Article I, Section VIII (11), invests Congress with power

> "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

A sovereign may put such limitations as it pleases upon the exercise of its inherent powers, and our Constitution has expressly vested in Congress power to prescribe limitations and rules. But the inherent power of the sovereign cannot be questioned.

As Chief Justice Marshall said in *Brown* v. *U. S.*, 8 Cranch 110:

> "Respecting the power of government no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself."

Various acts were passed by Congress for the confiscation of property owned by the rebels. There were, among others, the acts of August 6, 1861, and July 17, 1862, known as the Confiscation Acts, and the act of March 12, 1863, known as the Captures and Abandoned Property Act.

We will briefly review the decisions under each of these acts.

A. THE CONFISCATION ACTS.

Five or six cases involving these acts came before the United States Supreme Court at the same time, and, on account of their difficulty and importance, a reargument was ordered by the court (*Tyler* vs. *Defrees,* 11 Wall. 331, 347). The leading case was *Miller* vs. *United States,* 11 Wall. 268.

The provisions of the Confiscation Acts are set forth in the Miller case and in *United States* vs. *Klein,* 80 U. S. (13 Wall.) 128.

The act of August 6, 1861, provided that property purchased or acquired, sold or given, with intent to use or employ the same in aiding, abetting, or promoting the insurrection, should be lawful subjects of capture and prize wherever found, and it should be the duty of the President to cause the same to be seized, confiscated, and condemned. Proceedings for condemnation by the courts were provided by the act and the proceeds of a sale of the confiscated property was to be evenly divided between the United States and the informer.

The act of July 17, 1862, was the one under which most of the seizures were made. It contained fourteen sections. The first provided punishment for treason. The fifth recited the purpose as follows: "That to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same, and the proceeds thereof for the support of the army of the United States." The persons named are officers of the army and navy of the rebels, President, Vice-President, members of Congress, judges, cabinet officers, foreign ministers, commis-

sioners, consuls, governors, members of legislature of the rebels, and all holding any office or agency under the rebels whether such office or agency be national, state or municipal. It also includes persons who, owning property in any loyal state, should assist and give aid and comfort to the rebellion, and all sales of any such property should be null and void. The sixth section made it the duty of the President to seize all property of persons within any state, other than those named in the fifth section, who, being engaged in armed rebellion, or aiding and abetting the same, should not, within 60 days after public proclamation by the President, return to their allegiance to the United States. The seventh section provided for court proceedings *in rem,* similar, as nearly as possible, to admiralty and revenue proceedings, and declared that if it was found that the property came within the act it should be condemned "as enemy's property" and become the property of the United States and should be disposed of as the court should decree and the proceeds paid into the United States treasury "for the purposes aforesaid". Subsequent sections related to slaves and provided that slaves of persons in rebellion escaping within the Union lines should be deemed captives of war and forever free.

This last act is exhaustively considered in *Miller* vs. *United States,* 11 Wall. 268.

The Miller case was a proceeding brought to forfeit certain railroad stocks of one Samuel Miller, deceased. The libel against the property set forth that Miller had been an officer in the army of the rebels, a member of the rebel congress, a judge, etc. It also set forth the proclamation of the President on July 25, 1862, warning all persons to return to

their allegiance and the failure of Miller to return within the 60 day period. It also declared that the proceeds were for the use of the informer and the United States in equal parts. Upon this libel process of the court was issued directing the marshal to hold the stock and directing publication of citation in a Detroit newspaper. There was no personal service on Miller and he did not appear. On his default a decree was entered condemning the property and a sale was ordered, the proceeds to be divided between the informer and the United States. The proof produced consisted of an *ex parte* deposition of one Thatcher taken in New York. He said he saw Miller in Virginia in July, 1863. Miller told him that he approved of the acts of the Confederate government and was giving one-tenth of his income for the support of the Confederate army. Subsequently application was made to open the decree on affidavits setting forth the loyalty of Miller. The application was denied and its denial was affirmed by the Circuit Court, and also by the Supreme Court.

The opinion of the court is by Justice Strong. The court held:

1. The Confiscation Acts are constitutional if they are an exercise of the war powers of the Government as distinguished from its sovereign or municipal powers.

Justice Strong says that the Constitution confers upon Congress express power to declare war and make rules respecting captures on land and water. *"Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be*

legitimately prosecuted. It, therefore, includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of a captor. This is and always has been an undoubted belligerent right" (p. 305). Justice Strong also says: "It is sufficient that the right to confiscate the property of all public enemies is a conceded right. Now, what is that right, and why is it allowed? It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him. The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation" (pp. 305, 306). The Justice then says: *"War ex-*

isting, the United States were invested with belligerent rights in addition to the sovereign powers previously held. Congress had then full power to provide for the seizure and confiscation of any property which the enemy or adherents of the enemy could use for the purpose of maintaining the war against the government. It is true the war was not between two independent nations. But because a civil war, the government was not shorn of any of those rights that belong to belligerency" (p. 306). "It is, however, unnecessary to pursue this branch of the subject further. In the *Amy Warwick,* and in the *Prize Cases,* it was decided that in the war of the rebellion the United States sustained the double character of a belligerent and a sovereign, and had the rights of both" (p. 307).

2. The acts are an exercise of the war powers of the government.

The Court quotes from Chief Justice Marshall (*Rose* vs. *Himely,* 4 Cranch. 272): "But admitting a sovereign, who is endeavoring to reduce his revolted subjects to obedience, to possess both sovereign and belligerent rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act. If, as a legislator, he publishes a law ordaining punishment for certain offences, which law is to be applied by courts, the nature of the law and of the proceedings under it will decide whether it is an exercise of belligerent rights or exclusively of his sovereign power; and whether the Court, in applying this law to particular cases, acts as a prize court or as a court enforcing municipal regulations." Applying Chief Justice Marshall's test, the Court says that the acts in question, defined no crime and declared nothing unlawful. "It was

aimed exclusively at the seizure and confiscation of property used, or intended to be used, to aid, abet or promote the rebellion, then a war, or to maintain the war against the government. It treated the property as the guilty subject" (p. 308). The Court then reviews the act. It says that the sections relating to treason were an exercise of the sovereign as distinguished from the belligerent rights of the government. But the fifth section was not to punish treason or the rebels but was to seize and confiscate property "to insure the speedy termination of the rebellion". The Court concludes in an exhaustive opinion that this section was an exercise of belligerent as distinguished from sovereign powers.

The Court then discusses the question as to who are enemies, and holds that all persons described in the fifth and sixth sections of the act were enemies, saying: "Still less is it true that the laws of nations have defined who, in the case of a civil war, are to be regarded and may be treated as enemies. Clearly, however, those must be considered such who, though subjects or citizens of the lawful government, are residents of the territory under the power or control of the party resisting that government. Thus much may be gathered from the *Prize Cases*. And why are not all who act with that party? Have they not voluntarily subjected themselves to that party; identified themselves with it? And is it not as important to take from them the sinews of war, their property, as it is to confiscate the property of rebel enemies resident within the rebel territory? It is hard to conceive of any reason for confiscating the property of one class that does not equally justify confiscating the property of the other. We have

already said that no recognized usage of nations excludes from the category of enemies those who act with, or aid or abet and give comfort to enemies, whether foreign or domestic, though they may not be residents of enemy's territory. It is not without weight, that when the Constitution was formed its framers had fresh in view what had been done during the Revolutionary war. Similar statutes for the confiscation of property of domestic enemies, of those who adhered to the British government, though not residents of Great Britain, were enacted in many of the States, and they have been judicially determined to have been justified by the laws of war. They show what was then understood to be confiscable property, and who were public enemies. At least they show the general understanding that aiders and abettors of the public enemy were themselves enemies, and hence that their property might lawfully be confiscated. It was with these facts fresh in memory, and with a full knowledge that such legislation had been common, almost universal, that the Constitution was adopted. It did prohibit *ex post facto* laws. It did prohibit bills of attainder. They had also been passed by the States. But it imposed no restriction upon the power to prosecute war or confiscate enemy's property. It seems to be a fair inference from the omission that it was intended the government should have the power of carrying on war as it had been carried on during the Revolution, and therefore should have the right to confiscate as enemy's property, not only the property of foreign enemies, but also that of domestic, and of the aiders, abettors, and comforters of a public enemy. The framers of the Constitution guarded against excesses that had existed during the Revo-

lutionary struggle. It is incredible that if such confiscations had not been contemplated as possible and legitimate, they would not have been expressly prohibited, or at least restricted. We are therefore of opinion, that neither the act of 1861 nor that of 1862 is invalid, because other property than that of public enemies is directed to be confiscated. We do not understand the acts, or either of them, to be applicable to any other than the property of enemies. All the classes of persons described in the fifth and sixth sections of the act of 1862 were enemies within the laws and usages of war" (pp. 311-313). The Court then holds that it is not a valid objection that the acts do not confiscate the property of all enemies but only of certain classes of enemies. Admitting that all enemies are not included it was competent for Congress "to determine how far it would exert belligerent rights, and it is quite too large a deduction from the fact that the property only of certain classes of enemies was directed to be confiscated, that it was not intended to confiscate the property of enemies at all. If it be true that all the persons described in the fifth, sixth and seventh sections were enemies, as we have endeavored to show they were, it cannot matter by what name they were called, or how they were described" (p. 313).

3. The Court also holds that there was a sufficient seizure of the stock and that there was sufficient proof to sustain the decree.

B. The Captured and Abandoned Property Act.

This act of March 12, 1863, differs from the Confiscation Acts chiefly in the fact that no judi-

cial proceedings for the condemnation of the property are required and in that it is limited to property in insurrectionary districts.

This act (*Mrs. Alexander's Cotton,* 2 Wall. 404) was "to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts". It made it the duty of every officer or private of the Union forces "who make, take or receive any such abandoned property, or cotton, sugar, rice or tobacco from persons in such insurrectionary districts or have it under his control", to turn the same over to a Treasury agent. The act did not apply to maritime prize by the navy. It further provided that any person within two years after the suppression of the rebellion might file a claim with the Court of Claims and on proof of ownership and that he had never given any aid to the rebellion receive back the proceeds after deduction of expenses. Under the act the property was sold and the proceeds put in the Treasury.

This act frequently came before the Supreme Court.

Mrs. Alexander's Cotton, 2 Wall. 404.

In 1864 an expedition under Admiral Porter went up the Red River, a tributary of the Mississippi, and captured Fort De Russy. The insurgents evacuated the district but rallied and the Union forces retired after an occupation of less than two months. During the Union occupation some kind of convention was held by the natives who were almost unanimously against secession. During this period the cotton in question was taken from Mrs. Alexander's plantation. It was sent to Illinois where it was libelled as prize of war and sold. The evi-

dence as to Mrs. Alexander's loyalty was conflicting but after the seizure of the cotton she took the oath required by the President's proclamation of December 8, 1863. She always resided on the plantation from which the cotton was seized. Mrs. Alexander put in a claim for the proceeds and the District Court granted the claim. The decree was affirmed by the Circuit Court. On appeal to the Supreme Court, however, it was reversed.

Chief Justice Chase wrote the unanimous opinion of the Court. The Court in its opinion refers not only to the Captured and Abandoned Property Act but also to the Confiscation Acts and it states the rules governing the property seized as follows: "There can be no doubt, we think, that it was enemies' property. * * * It is said, that though remaining in rebel territory, Mrs. Alexander has no personal sympathy with the rebel cause, and that her property therefore cannot be regarded as enemy property; but this court cannot inquire into the personal character and dispositions of individual inhabitants of enemy territory. We must be governed by the principle of public law, so often announced from this bench as applicable alike to civil and international war, that all the people of each State or district in insurrection against the United States, must be regarded as enemies, until by the action of the legislature and the executive, or otherwise, that relation is thoroughly and permanently changed" (pp. 418, 419). "Being enemies' property, the cotton was liable to capture and confiscation by the adverse party (*Prize Cases,* 2 Black, 687)" (p. 419).

United States vs. *Padelford,* 9 Wall. 531.

Padelford lived in Savannah, Georgia, and was apparently loyal to the United States. During

the rebellion, Padelford, under protest and practical coercion, subscribed to a Confederate loan. He also voluntarily executed as surety three bonds for the performance of their duties by two commissaries and a quartermaster of the rebel army. They were personal friends and Padelford executed the bonds through personal friendship. Subsequently (December 21, 1864) General Sherman captured Savannah. Thereafter, and on January 18, 1865, Padelford took the oath of amnesty and allegiance to the United States prescribed by the President's proclamation. Thereafter, his cotton was seized by the military authorities, turned over to the Treasury Department agents, sold and the proceeds put into the Treasury. Padelford then filed his claim under the Captured and Abandoned Property Act. A decree in favor of the claimant is unanimously affirmed by the Supreme Court.

Chief Justice Chase writes the unanimous opinion of the court. He says that the Secretary of the Treasury has defined captured property as property "which had been seized or taken from hostile possession by the military and naval forces of the United States", and the Court adds "and we think it correct" (p. 540). The court further says: "Applying the principles above stated to the case before us, three propositions seem to be established: (1) That the cotton of the petitioner was, by the general policy of the government, exempt from capture after the National forces took possession of Savannah. (2) That this policy was subject to modification by the government, or by the commanding general, in the exercise of his military discretion. (3) That the right of possession in private property is not changed, in general, by capture of the place where it happens to be, except

upon actual seizure in obedience to the orders of the commanding general" (p. 541).

United States vs. *Klein,* 13 Wall. (80 U. S.) 128.

In this case, which is cited by plaintiff, the Court by a divided vote held that an act of Congress was invalid which practically excluded persons who had been pardoned from recovering in the Court of Claims under the Abandoned and Captured Property Act. The majority of the Court, by Chief Justice Chase, says: "It may be said in general terms that property in the insurgent States may be distributed into four classes:

"1st. That which belonged to the hostile organizations or was employed in actual hostilities on land.

"2d. That which at sea became lawful subject of capture and prize.

"3d. That which became the subject of confiscation.

"4th. A peculiar description, known only in the recent war, called captured and abandoned property" (p. 136).

The Court then says that property in the 1st class "became, wherever taken, *ipso facto,* the property of the United States". The 2d class comprehended ships with their cargoes belonging to the insurgents or employed in their aid but property in these "was not changed by capture alone but by regular judicial proceeding and sentence". The Court then says that "almost all the property of the people

in the insurgent States was included in the third description".

There is not a word in the opinion which denies the power of a belligerent to confiscate private property without any court or legal proceedings. The Court here, as in the other Civil War cases, was interpreting the rules of warfare as prescribed by Congress in accordance with its constitutional powers, and, as pointed out by Chief Justice Chase, no such proceedings were required in the Abandoned and Captured Property cases.

Sprott vs. *United States,* 20 Wall. 459.

The majority of the Court hold that a purchaser of cotton from the Confederate States, who knew the purchase money went to sustain the rebellion, cannot recover under the Captured and Abandoned Property Act. The moral turpitude of the transaction prevents any recovery.

Haycraft vs. *United States,* 22 Wall. 81.

The Court holds that no proceeding can be brought under the Captured and Abandoned Property Act more than two years after the suppression of the rebellion. In the course of its unanimous opinion by Chief Justice Waite, the Court gives a clear statement of the reason for this act as follows: "It was evidently a war measure, and the statute is to be construed in the light of that fact. It was confined to private property of the enemy. Public property was expressly excluded. It embraced no private property except such as was abandoned by its owners or liable to capture. The property in this case was cotton, and, according to the uniform decisions of this Court, the subject of capture. (*Mrs. Alexander's Cotton,* 2 Wall. 419;

Padelford's Case, 9 *id.* 540.) As was said in Mrs. Alexander's case, cotton was regarded by the insurgent government as one of its 'main sinews of war.' It was in fact the foundation upon which the financial system of the rebellion was built. It was a security the insurgents offered for the payment of their debts. Upon it they relied for their influence abroad. To obtain it, forced contributions were exacted from its owners. From time to time in the progress of the war it was found upon the enemy's territory occupied by the military forces of the United States. While, when so found, it might have been owned by non-combatant enemies and, in that sense, private property, it was in fact, under the circumstances, at least semi-public. If left undisturbed, and the insurgents should repossess themselves of the territory, it would again be placed where it might strengthen the rebellion. Its capture was, therefore, legitimate; not for booty, but to cripple the enemy. In that way it was kept out of the insurgent treasury. It might have been destroyed, but the unnecessary destruction of property ought always to be discouraged. The act of Congress looked to its preservation, but authorized its capture. In so doing Congress acted within its constitutional power to 'make regulations concerning captures on land and water'. (Art. I, sec. 8, par. 11.) In the indiscriminate seizure which was likely to follow such an authority, it was anticipated that friends as well as foes might suffer. Therefore, to save friends, it was provided that any person claiming to have been the owner might, at any time within two years after the suppression of the rebellion, prefer his claim, and, upon proof of his ownership and loyalty, receive the money realized by the United

States from the sale of his property. That expresses all there is of the trust or the remedy provided" (pp. 93, 94).

Lamar vs. *Browne*, 92 U. S. 187.

This was an action of trover to recover the value of certain bales of cotton. The defendants were agents of the Treasury Department. During the war Lamar stored cotton in a warehouse in Thomasville, Ga. In December, 1865, the defendants took the cotton after it had been seized by the Union army. In January, 1865, Lamar had taken the amnesty oath under the President's proclamation of December 8, 1863. The Court decides that the action does not lie as the defendant was acting within his powers as agent of the government in the exercise of its powers as a belligerent. The Court's opinion written by Chief Justice Waite gives a clear statement of the powers of the government. The Court states that the evidence shows that the cotton was seized by the military forces of the United States in obedience to the orders of a commanding general. In the course of its opinion the Court says: "By the battle, the enemy has been compelled to let go his possession, and the conqueror may proceed with the collection of all hostile property thus brought within his reach, so long as he holds the field. * * * That cotton, though private property, was a legitimate subject of capture, is no longer an open question in this Court. * * * It is not too much to say that the life of the Confederacy depended as much upon its cotton as it did upon its men. If they had had no cotton, they would not have had, after the first year or two, the means to support the war. To a very large extent it furnished the munitions of

war, and kept the forces in the field. It was, therefore, hostile property, and legitimately the subject of capture in the territory of the enemy. For the purposes of capture, property found in enemy territory is enemy property, without regard to the status of the owner. In war, all residents of enemy country are enemies. Knowing this, but bearing in mind 'the humane maxims of the modern law of nations, which exempt private property of non-combatant enemies from capture as booty of war' (*Klein's Case,* 13 Wall. 137), Congress passed the abandoned and captured property acts. 12 Stat. 820. * * * Capture for private gain was not permitted. All went to the government. * * * Property captured at sea can never be converted by the captor until it has been brought to legal adjudication. * * * *Not so, in general, with regard to movable property on land. There the capture changes the ownership without adjudication, unless restrained by governmental regulations. What shall be the subject of capture, as against his enemy, is always within the control of every belligerent. Whatever he orders is a justification to his followers. He must answer in his political capacity for all his violations of the settled usages of civilized warfare. His subjects stand behind him for protection".* The United States during the war was both "belligerent and constitutional sovereign * * *. *As belligerent they might enforce their authority by capture; and, as sovereign, they might recall their revolted subjects to allegiance by pardon, and restoration to all rights, civil as well as political. All this they might do when, where and as they chose. It was a matter entirely within their sovereign discretion.* * * * The military forces act in the field according to the laws

of war, and seize that which is apparently the subject of capture. They act upon apperances, not upon testimony. They occupy on land the same position that naval forces do at sea. Their duty is to seize and hold, leaving it to the owners to make good their claim, as against the capture, in the appropriate tribunal established for that purpose. It needs but a moment's reflection to discover the importance of acting upon this theory at the close of the rebellion. Novel questions of public law were then presented, some of which were not easy of solution. An army in the field engaged in making captures could not be expected to stop and decide such questions, and the civil authorities were not in a condition to determine at once the rights of all parties under all circumstances." The Court states that it is well settled law that if the naval forces capture anything not lawful prize, and the captured property is restored to its owner, the captors are not liable to suit at law for the trespass. The prize courts alone have jurisdiction. The same rule applies to land capture. The Court quotes from *Elphinstone* vs. *Bedreechund,* 1 Knapp P. C. 316, in which private property on land was seized by the military authorities occupying the conquered territory. In that case the property was taken by the defendant acting under orders. The Attorney-General in that case argued before the Privy Council: "If property is taken by an officer under the supposition that it is the property of a hostile State, or of individuals, which ought to be confiscated, no municipal court can judge of the propriety or impropriety of the seizure; it can be judged of only by an authority delegated by his majesty, and by his majesty ultimately assisted by your lordships as his counsel." Lord Tenterden

announced the action of the council in these words: "We think the proper character of the transaction was that of a hostile seizure made, if not *flagrante,* yet *nondum cessante bello,* regard being had both to the time, the place, and the person, and consequently that the municipal court had no jurisdiction to adjudge upon the subject, but that, if anything was done amiss, recourse could only be had to the government for redress." The Court then says: "Acting upon the principle thus recognized in England, the United States delegated to the Court of Claims the necessary authority for the redress of grievances under such seizures by the military forces" (pp. 194-198).

Young vs. *United States,* 97 U. S. 39.

The claimant in this case was a British subject whose cotton was seized in the South during the war. The claimant had made arrangements with the State of North Carolina for purchase of cotton and for running the blockade. Special privileges were granted to him. The Court holds that the cotton was enemy's property subject to confiscation and also that the claimant, being a British citizen who, therefore, could not be guilty of treason to the United States, did not come within the President's amnesty proclamation.

Chief Justice WAITE said in the opinion: "The authority for the capture was not derived from any particular act of Congress, but from the character of the property, it being 'potentially an auxiliary' of the enemy, and constituting a means by which they hoped and expected to perpetuate their power." The Court then quoted from Mrs. Alexander's case and continued: "All property within enemy territory is in law enemy property, just as all persons in the same territory are enemies. A

neutral, owning property within the enemy's lines, holds it as enemy property, subject to the laws of war; and, if it is hostile property, subject to capture. It has never been doubted that arms and munitions of war, however owned, may be seized by the conquering belligerent upon conquered territory. The reason is that, if left, they may, upon a reverse of the fortunes of war, help to strengthen the adversary. To cripple him, therefore, they may be captured, if necessary; and *whether necessary or not, must be determined by the commanding general, unless restrained by orders of his government, which alone is his superior. The same rule applies to all hostile property. The rightful capture of movable property on land transfers the title to the government of the captor as soon as the capture is complete, and it is complete when reduced to 'firm possession'. There is no necessity for judicial condemnation. In this respect, captures on land differ from those at sea"* (p. 60).

The Court then said, "While all residents within the Confederate territory were in law enemies, some were in fact friends". For this reason the Captured and Abandoned Property Act was passed. "As to all persons within the privileges of the act, the proceeds were held in trust, but as to all others the title of the United States as captor was absolute." The Court continued: *"But for the provisions of the Abandoned and Captured Property Act, the title to and the proceeds of all captured property would have passed absolutely to the United States"* (p. 67).

The Court concludes by stating that the claimant's only remedy was to proceed through his own government by diplomatic representations.

These decisions establish:

1. Confiscation of private property on land in war is a belligerent right.

2. The belligerent determines how far he will exercise this right.

3. Title passes upon actual seizure of the property.

4. The person deprived of his property has no remedy in the courts of neutral countries, and none in his own country, unless the belligerent has so provided.

We will briefly refer to some of the cases relied upon by the plaintiff in this connection.

The quotation which plaintiff gives in his brief (p. 21) from *Planters Bank* v. *Union Bank,* 16 Wall. 483, gives an entirely wrong impression as to the decision. The two sentences quoted are explained by those which follow, which are omitted by plaintiff for obvious reasons. Justice Strong said:

> "Still, as the war had not ceased, though it was not flagrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the government, or by the effect of Congressional legislation. A pledge, however, had been given that rights of property should be respected" (p. 495).

The Court then referred to a proclamation of General Butler, made when the city of New Orleans surrendered:

> "All the rights of property of whatever kind will be held inviolate, subject only to the laws of the United States" (p. 495).

The Court then said:

> "But admitting, as we do, that private property remained subject to confiscation, and also that the proclamation applied exclusively to inhabitants of the district, it is undeniable that confiscation was possible only to the extent and in the manner provided by the acts of Congress" (p. 496).

The Court then reviews the Confiscation Acts and says:

> "The system devised was necessarily exclusive. No authority was given to a military commandant, as such, to effect any confiscation" (p. 496).

Plaintiff entirely overlooks the fact that the Constitution empowered Congress to establish laws of confiscation, that Congress had exercised the authority thus conferred, and that the Civil War decisions were made with reference to the acts of Congress. But these decisions uniformly recognize the inherent rights of a belligerent which Congress could enforce just as far or little as it deemed best.

It will be observed that these decisions were made with reference to intranational cases. This Court did not attempt to adjudicate rights of citizens of a foreign country, which country was engaged in civil strife. It determined the rights of its own citizens. If the Court declined to set aside such acts done on its own territory, it will, of course, decline to interfere when the acts were performed on foreign soil.

Plaintiff, citing various cases in the admiralty jurisdiction, confuses the law governing maritime prize with that governing title to land and title to tangible personal property on land.

In the case of movable property on land, "the capture changes the ownership without adjudication, unless restrained by governmental regulations." (*Lamar* v. *Browne,* 92 U. S. 187, 195.)

On the other hand, "property captured at sea can never be converted by the captor until it has been brought to legal adjudication." (*Lamar* v. *Browne,* 92 U. S. 187, 195.)

The question of title to land is more complicated than that of personal property. Wheaton says (Wheaton's International Law, 4th Eng. Ed., p. 543):

> "We have seen that a firm possession, or a sentence of a competent court, is sufficient to confirm the captor's title to personal property or moveables taken in war. A different rule is applied to real property, or immovables."

Wheaton then says that title to land acquired in war must be confirmed by a treaty of peace before it can be considered as completely valid.

POINT X.

Actual recognition of belligerency is not necessary to the cause, for as a state of actual civil war existed, and as the Constitutionalists had a de facto government, further inquiry is precluded.

Actual formal recognition is not necessary for the purposes of this case.

In *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347, the Court stated at page 358 that

"sovereignty is pure fact", and it decided that a seizure by a State, whether *de facto* or *de jure,* could not be complained of in the courts.

In *Underhill* v. *Hernandez,* 168 U. S. 250, the Court stated that

> "every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."

The Court continued:

> "Nor can the principle be confined to lawful or recognized governments, or to cases where redress can manifestly be had through public channels. The immunity of individuals from suits brought in foreign tribunals for acts done within their own States, in the exercise of a governmental authority, whether as civil officers or as military commanders, must necessarily extend to the agents of governments ruling by paramount force as matter of fact. Where a civil war prevails that is, where the people of a country are divided into two hostile parties, who take up arms and oppose one another by military force, generally speaking foreign nations do not assume to judge of the merits of the quarrel. If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation. If the political revolt fails of success, still if actual war has been waged, acts of legitimate warfare cannot be made the basis of individual liability."

In *The Prize Cases,* 2 Black, 635, which has been referred to under a previous Point, it was held that the Court could not

> "affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race"

In *Mauran* v. *Insurance Co.,* 6 Wall. 1, it was held that the Confederacy was a *de facto* government with all the belligerent rights which *ipso facto* go with such government. Justice Nelson defined such a government at page 13:

> "Another illustration will be found in a capture by a *de facto* government, which government is defined to be one in possession of the supreme or sovereign power, but without right —a government by usurpation, founded perhaps in crime, and in the violation of every principle of international or municipal law, and of right and justice; yet, while it is thus organized, and in the exercise and control of the sovereign authority, there can be no question between the insurer and the insured as to the lawfulness of the government under whose commission the capture has been made. * * * Now, applying these principles to the case before us, it will be seen that the question is not whether this so-called Confederate government, under whose authority the capture was made, was a lawful government but whether or not it was a government in fact, that is, one in the possession of the supreme power of the district of country over which its jurisdiction extended?"

In *Thorington* v. *Smith,* 8 Wall. 1, Chief Justice Chase discussed the two classes of *de facto* governments. The first and highest degree is where

> "the usurping government expels the regular authorities from their customary seats and

> functions, and establishes itself in their place, and so becomes the actual government of a country."

The second class, in which the Confederacy falls, is a government of paramount force maintained by arms against the lawful government within its territory. The Court held:

> "To the extent, then of actual supremacy, however unlawfully gained, in all matters of government within its military lines, the power of the insurgent government cannot be questioned."

In some of the cases, there are loose expressions as to "legitimate" and "civilized" warfare. But, so far as the courts are concerned, they have no jurisdiction to inquire whether any act of war is "civilized" or "uncivilized". Their power ceases as soon as it is determined that a state of war existed or a *de facto* government has been proved. The cases uniformly hold that an act by a belligerent or a *de facto* government is the act of a sovereign power, the legality of which cannot be inquired into by the courts.

The Constitutionalists had established a *de facto* government over a vast area when the seizure was made and the hides were sold, which has since extended over the entire republic, and was then properly classified in the first of the two classes of *de facto* governments named by Chief Justice Chase. Indeed it was a higher degree of *de facto* government than any named by the Chief Justice because Huerta was a usurper and his acts and those of his followers were unconstitutional, and the Constitutionalists ousted, not a lawful, but an unlawful government.

POINT XI.

The seizure of the goods in issue was an act of war. The provisions of the Hague Treaty relied on by plaintiff-in-error are inapplicable.

The facts relating to the seizure are set forth in the testimony of one who took an active part in the matters surrounding it. When Torreon had been captured, General Villa conferred with the citizens through defendant's witness, as the citizens' representative, in regard to the imposition of a tax "in order to get supplies to provide themselves with the implements of war" (p. 82). The taxpayers of the City of Torreon assembled in the casino and held meetings for eight days regarding this question (p. 94). Over one hundred of their number were present (p. 84). Martinez complains that he was not present at this meeting. He wilfully failed to attend while attempting to escape the payment of the tax. Further his brother-in-law to whom he had given full power of attorney for the disposition of the goods in issue (pp. 43-47) was present and was fully cognizant of all occurrences leading to the imposition of the tax (p. 101).

Mr. De la Garza, who testifies to all these facts, acted as negotiator between them and General Villa (pp. 84, 93). It was finally agreed by the citizens of the Laguna District, numbering 125,000 (p. 92) on the one hand and the Carranza army on the other, that the said citizens should contribute 3,000,000 pesos (p. 82). Four commissions were appointed by these citizens themselves to apportion the tax (p.

82). These commissions were divided into those of industry, agriculture, banking and commerce (p. 82). The foremost citizens of the City of Torreon were on the commissions. The committee on banking included agents of the National Bank, Bank of London, Bank of Laguna, Bank of Coahuila and Germanic Bank (pp. 87, 88). Mr. De la Garza and Mr. Villareal were appointed by a written instrument signed by General Villa, chairmen of the whole financial committee (pp. 83, 84, 85, 87, 88). The four commissions collected the money and deposited it in a bank in the name of the Constitutionalist troops of the Division of the North (p. 84). These moneys were withdrawn on orders sigend by Mr. De la Garza, countersigned by two Constitutionalist generals, in order to distribute it amongst the troops (p. 84).

A list was prepared of those who defaulted in the payment of their assessment of this tax, and Martinez was included in the list (pp. 88, 95). The list is still in Torreon or was at the time the testimony in this suit was taken (pp. 84, 85). Receipts were given to those who paid their assessment (pp. 84, 85). The list of those in default was turned over to the military authorities and orders issued to summon them to appear (pp. 85, 95). Such a summons was attempted to be served on Martinez, who designedly avoided personal service (pp. 95, 96). A notice, however, was left at his sister's house, and he seems to have been aware of that fact (pp. 99, 100). On default in the payment of the assessment, orders were issued to dispose of the property of those in default, and a specific order was given in the case of Martinez (pp. 85, 86). A telegram was issued to seize the property (p. 86). On receipt of a copy of the telegram from General

Villa's Chief-of-Staff, Mr. De la Garza in the name of the Commissioner of Finance forwarded the order to Colonel Santos at San Pedro (pp. 86, 87). Colonel Santos replied by telegram that he had in his possession the merchandise belonging to Martinez as per instructions of General Villa, * * * and the goods were on their way to El Paso (p. 88). The plaintiff has pressed the idea of confiscation, but there was no confiscation. In a regular and orderly manner, a tax was apportioned and levied, and notice given of the penalty imposed for default. A default was here designedly and intentionally made, and the property of the defaulter seized for such default. Each step was done in accordance with the written instructions of the representative of the Carranza Government, in a manner which speaks highly of a clear sense of justice and order. General Carranza gave his approval as to each step taken, and as the acknowledged head of the Constitutionalist Government ratified everything that was done (pp. 90, 91).

The character or quality of the tax cannot be tested for the purposes of this case by any rules of taxation to which we are accustomed, especially in time of peace. Equality of taxation and the imposition of equal taxation is a principle of justice that is so familiar that any taxation which singles out some or lacks in at least the forms of equal imposition seems at first to us almost to belie its character as a tax. But even in this country we are accustoming ourselves to the idea of a tax that singles out the very few, and which may be grossly unequal.

The general rules by which belligerents should be governed in levying war taxes are found in Moore's International Law Digest, Vol. VII, pages 280-287,

inclusive. Moore quotes the following from President's Polk's special message to Congress in 1848:

> "No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner conformable to the rules of cilivilized warfare. The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

The general rule is that the tax be imposed as uniformly as circumstances will admit, against the inhabitants of a district, under the direction of the commander of the army in that locality, and that receipts be given.

Mr. Gonzales, whose testimony was admitted by stipulation, after stating that he had been a judge of the highest court in the State of Chihuahua, said that Mexican armies were governed by the instructions given to our army during our Civil War (pp. 321-324). General Order, Number 100, April 24, 1863 (War of the Rebellion, Official Records, Series 3, III, 152; quoted in Moore, Vol. VII, at page 286), was:

> "Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army of the United States. If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity."

Even assuming the very provisions of the Hague Treaty asserted by the plaintiff-in-error and quoted at length in his brief were applicable, the record shows they have been complied with minutely.

The first provision of such Treaty relied upon by the plaintiff-in-error is Chapter II, Article 4, reading as follows:

> "Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings except arms, horses and military papers remain their property."

This provision obviously refers to "personal belongings" of "prisoners of war". Martinez was not a prisoner of war, hence the provision is inapplicable.

The next provision of the Hague Treaty which can have any bearing on the situation, relied on by the plaintiff-in-error, is Article 23:

> "In addition to the prohibitions provided by special conventions, it is specially forbidden * * * (*g*) To destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war."

In the first place, Martinez's property was not "seized", as the term is used here. There was no wanton taking of property without a hearing. The property was taken for a deliberate default in the payment of a tax self-imposed by the fellow citizens of Martinez. Even assuming that there had been such a seizure as the term is used in this provision of the treaty, such seizure is justified if it "be imperatively demanded by the necessities of war". The Commander-in-Chief of the Constitutionalist

Army of the North stated that the said funds were absolutely necessary for the prosecution of the war and the restoration of orderly government (p. 98).

Article 46 is next invoked by the plaintiff:

> "Family honor and rights, the lives of persons and private property, as well as religious convictions and practice must be respected. Private property cannot be confiscated."

As previously pointed out, private property here was not confiscated.

Article 51:

> "No contribution shall be collected except upon a written order and on the responsibility of a Commander-in-Chief."
>
> "The collection of said contribution shall only be effected as far as possible in accordance with the rules of assessment and necessity of the taxes in force."
>
> "For every contribution a receipt shall be given to the contributors."

The evidence here goes beyond the requirements of this provision of the Hague Treaty. It appears that the contribution was made upon the written order of the Commander-in-Chief of the Army of the North (pp. 82, 84). It further appears that the seizure of the plaintiff's property for default in the payment of the assessment on the written order of the Commander-in-Chief of the Army of the North had the ratification of the head of the Constitutionalist Government, now the head of the *de jure* Government of Mexico (p. 91). The evidence goes beyond the requirement that the collection of the tax be in accordance with the rules and necessities in force at Torreon. It appears that the assessment was made in accordance with the voluntary and

spontaneous wishes of the leading citizens of the Laguna District. It further appears that a receipt was given on the payment of the taxes imposed on which Martinez defaulted (p. 85).

Our answer to the provision of Article 51 applies to Article 52. We might add parenthetically here that Article 52 further corroborates the contention of the defendant-in-error that the Hague Treaty refers only to international affairs and not to intranational affairs when it provides that the inhabitants shall not be involved in the obligation of "taking part in military operations against their own country".

Article 48, relied on by the plaintiff-in-error, refers to the usual and ordinary governmental taxes in the usual and proper administration of the municipal and state government, and has no bearing on the facts in issue.

Article 49 refers to additional taxes. We have previously pointed out that the additional taxes were for the needs of the army.

The inapplicability of Articles 50 and 51 we have previously referred to.

The plaintiff-in-error then relies upon the Constitution of the Republic of Mexico. While we cannot see how the courts of this country can construe and apply and enforce the Constitution of the Republic of Mexico by the Executive of that Republic towards its own citizens, the provision referred to by the plaintiff has not been violated. Plaintiff quotes the following provision of the Mexican Constitution:

> "Excessive fines, confiscation of property or any other penalties unusual or working corruption and blood."

Our references to the Hague Treaty above show that this provision was not trespassed upon.

But we again state the provisions of the Hague Treaty are not applicable. We repeat that the Hague Treaty governs international, not intranational affairs. The cases cited by the plaintiff-in-error clearly illustrate the distinction. In the case of the *Appam* and kindred causes, cited by the plaintiff-in-error, claims were made by the citizens of one country or sovereign against another country or sovereign. The issue was international. In the case at bar, a claim is made by a citizen of a country for alleged infractions of a treaty by the sovereign or executive of his own country.

In Re Toscano, 208 Fed. 938, cited by the plaintiff-in-error, continues to point out the inapplicability of the Hague Treaty.

President Wilson in his various Executive documents says, in effect, that this country will remain neutral in the strife:

> "It is our duty to * * * enable the people of Mexico to set their affairs in order again. The position of *outsiders* is always particularly trying, etc. *I deem it my duty to exercise the authority conferred upon me by the law of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side the border. I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the Republic of Mexico—a policy suggested by several interesting precedents and certainly dictated by many manifest considerations of practical expediency. We cannot in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them.*"

Again, "The people of Mexico are entitled to settle their own domestic affairs in their own way and we sincerely desire to respect their right." These Executive Proclamations clearly indicate that this country will not interfere in any of the internal affairs of Mexico. They may make their own assessments in any way they please. This country will not interfere. They may levy such taxes as they deem proper. This country will not interfere; but as soon as either party trespasses on the soil of this country and draws a neutral nation into the conflict, then the Hague Treaty becomes applicable. It is to carry out that neutrality hereinbefore referred to that the soldiers of either side to the conflict are interned. There can be no analogy, as the plaintiff coldly attempts to point out, between human spoils of war and inanimate property.

POINT XII.

The Constitutionalists have been recognized as the de jure Government of Mexico, and having had belligerent rights at the time of the seizure, the courts of this country cannot review the validity of the act of seizure.

Such a review as plaintiff attempts to enforce in this case would constitute an appeal directly from the Executive Department of Mexico to the Judicial Department of the United States. It is elementary that the three branches of government in this country are wholly independent of one another, and that the judiciary cannot review the official acts of the Executive Department of its own country.

The remedy of the plaintiff, if he feels aggrieved, is by recourse to his own country and not to the courts of a foreign power.

Martinez's own country publicly extends this remedy to him. The Carranza Constitutionalist Government had promulgated a decree announcing that compensatory damages will be awarded the citizens of Mexico for injuries they have suffered during the present struggle (p. 191). Provision is made by this decree for the appointment of a commission to ascertain the damages on the claims presented (p. 191).

It would seem that the government created by the efforts of the Constitutionalists would be liable for such damages suffered, whether caused by the acts of the Constitutionalists or Federalists, even in the absence of such a decree as is above referred to.

Bolivar Ry. Co. (Gt. Brit.) v. *Venezuela* (Feb. 17, 1903), Ralston Venezuela Arbitration of 1903, p. 394.

Dix (U. S.) v. *Venezuela* (Feb. 17, 1903), Ralston, 7.

Heny (U. S.) v. *Venezuela,* Ibid. 14, 22.

The theory seems to be that a change of the national will was manifested *ab initio* culminating in the new government.

Oteri Claim v. *Honduras,* For. Rel. 1899, 352.

Kummerow (Germany) v. *Venezuela* (Feb. 13, 1903), Ralston, 561.

Redler (Germany) v. *Venezuela, Ibid.* 560.

Baasch and Römer (Netherlands) v. *Venezuela* (Feb. 28, 1913), *Ibid.* 907.

As we have previously pointed out, the effect of the final success of the revolution was retroactive to its incipience. Even assuming the acts of the Constitutionalists in taking the property of Martinez were unlawful, a remedy would still be enforcible against his own country if he can substantiate his claim.

Hill (U. S.) v. *Peru* (Dec. 4, 1868), Moore Arb. 1665.

Hughes (U. S.) v. *Mexico* (Mar. 3, 1849), Moore Arb. 2972.

Fowks v. *Peru*, For. Rel. 1901, 430-434.

MacCord v. *Peru* (May 17, 1898), 6 Moore Dig. 985-990.

Even though the Constitutionalists be regarded at that time as merely a local *de facto* Government, their acts cannot be questioned. A temporary occupant of a particular territory constitutes a *de facto* Government, carrying with it the privilege of exercising the functions of government, including the appointment of necessary municipal officers and the power to prescribe revenues, the amount to be paid and methods of enforcing the same.

I Moore Dig. 45 ff.

7 *Ibid.* 245 ff.

2 Op. Atty. Gen. 321.

9 *Ibid.* 140.

Magoon Rep. 11 ff.

Hall, Part III, Chap. IV.

Oppenheim, p. 204 ff.

Bordwell P. Law of War, Chaps. VIII, IX.

Spaight J. M. War Rights on Land, Chaps. XI, XII.

The Hague (Nijhoff, 1915-1916), 108 p. & suppl.

Regarding the Constitutionalists, therefore, solely as belligerents or merely as a local *de facto* Government, the judiciary of this country is without power to test the validity of the act of seizure complained of.

POINT XIII.

These actions, ordered to be argued with American Metal Company v. Ricaud (No. 119), involve different questions and bear no analogy to each other.

On scarcely one week's notice, plaintiff moved to advance these causes for argument with No. 119, on the ground that some of the facts involved are similar. (Affidavit on motion to advance, p. 2.) Defendant submits that the questions involved are fundamentally different.

The Circuit Court of Appeals for the Fifth Circuit certified the following questions to this Court in the Ricaud case:

(1) Assuming that the bullion in suit was seized, condemned and sold for war supplies by the Constitutionalist forces in revolution in Mexico acting under authority from General Carranza claiming to be the Provisional President of the Republic of Mexico, has the District Court of the Western District of Texas, into which said bullion has been imported from Mexico, jurisdiction to try and adjudge as to the validity of the title acquired by and through said seizure, appropriation and sale by the Carranza forces, as against an *American citi-*

zen claiming ownership of the said bullion prior to its seizure?

(2) If yes, does the subsequent recognition by the United States Government of Carranza as the legitimate President of the Republic of Mexico and his Government as the only legitimate Government of the Republic of Mexico deprive this Court of jurisdiction on this appeal to decide and adjudge the case on its merits?

(3) If question 2 is answered in the negative, did the seizure, condemnation and sale of the bullion in the manner and for the purposes stated and to be assumed in question 1, have the effect of divesting the title to or ownership of it of a *citizen of the United States of America* not in or a resident of Mexico when such seizure and condemnation occurred?

The certificate of the Circuit Court of Appeals for the Fifth Circuit showed the following facts upon which the above questions are based: The American Metal Company, an American corporation, claimed to be the owner of the property in suit in the month of September, 1913, when it was forcibly taken from its possession in the Republic of Mexico. The property was moved into the United States and placed in a bonded warehouse at the port of El Paso, Texas, in March, 1914. While there the plaintiff obtained a temporary injunction restraining the Collector of Customs from making delivery of the bullion in suit. The defendants, other than the Collector of Customs, claimed to be the owners of the property through purchase from the Constitutionalist army at Mexico.

The defendants alleged the existence of a civil

war in Mexico at the times in issue and the designation of Carranza as the Provisional President of the Constitutionalist forces against the Government led by Huerta. The defendants alleged the control of a large portion of the Republic of Mexico by the Constitutionalist army, including that part of Mexico where the property in issue was situated at the time it was taken.

In September, 1913, the defendants claim that Pereza, one of the Carranza generals acting in such capacity, demanded and received from the Penoles Mining Company the property in suit. The same was taken, it is alleged, solely as a war measure for the purpose of providing necessaries for the soldiers.

A receipt was given for the property taken at the request of the representative of the said Penoles Mining Company, the bullion to be paid for on the establishment of a stable government and at the conclusion of the revolution. It was further alleged that the taking by the Carranza forces was a taking on behalf of the *de facto* Government of Mexico.

The Penoles Mining Company, from whom the defendants claim the property was taken, was a Mexican corporation claiming ownership of the property in issue. The defendants in conclusion in that case pleaded that the allegations of the complaint and bill are based upon disturbances of a political nature in a foreign Government and that no act of the military commanders of the *de facto* Government of Mexico are subject to review in that Court.

The action was *in rem*. The plaintiff claimed title to the *res* under a bill of sale delivered to it prior to the alleged seizure. The Court merely de-

cided that the *res* before it on the evidence presented belonged to the American Metal Company.

The cases here at bar involve the right of a Mexican citizen to a review by the American judiciary of the acts of the Mexican *de facto* Executive in imposing a tax on the Mexican citizen for purposes of internal war and to review the acts of such Mexican Executive in imposing a penalty on failure of the Mexican citizen to comply with the tax.

A brief review of the facts in this case sufficiently demonstrate the difference in the questions involved in this case and in the Ricaud case.

This action is in reality prosecuted by a Mexican citizen. While a formal assignment to an American citizen, an employee of the attorneys for the plaintiff-in-error, was made, the cause of action involved concededly, and in fact it appears by the affirmative proof of the plaintiff still, belongs to the Mexican citizen for whose benefit the action was prosecuted (Record, pp. 47, 48, 49, 30). Emanuel Martinez prosecutes this action. In September, 1913, he, a citizen of the Republican of Mexico, was engaged in business in Torreon, in the State of Coahuila. On October 1st, 1913, while civil war raged in Mexico, led on the one hand by the Carranza or Constitutionalist forces and on the other by the Huerta or Federal forces, the City of Torreon was captured by the Constitutionalists. With the acquiescence and co-operation of the citizens of the City of Torreon, a tax was imposed on such citizens for the purposes of carrying on the war. Martinez, the real plaintiff here, was included in the assessment. He designedly defaulted in payment and fled the city. With the approval of General Carranza, an order was given for the seizure of his property for such default. The plain-

tiff here claims that the property involved in this suit was such property so seized. It seeks to wrest it from this defendant.

All the transactions resulting in the purchase by the defendant-in-error or its predecessor in title of the property in issue occurred in the Republic of Mexico. All negotiations, the testimony is uncontradicted, relating to the purchase by the defendant-in-error or its predecessor in title occurred in the Quartel Generale in Juarez, Mexico. The bill of sale of the property in issue was signed and delivered to the defendant-in-error's predecessor in title by the Constitutionalist Government in Juarez, Mexico. Payment of the goods was made at the Quartel Generale in Juarez, Mexico. The manual delivery of the goods by the Constitutionalist Government to the defendant was made at the railroad station in Juarez, Mexico. The goods were reshipped after delivery by the Constitutionalist Government from Juarez, Mexico, consigned to a European port, and later withdrawn from bond at New York (Record, pp. 128-133, 150, 157).

The arguments presented by the plaintiff-in-error in the State courts were directed to pointing out that the Constitutionalist Government was not recognized either as the *de facto* Government or as belligerents by the Government of the United States. This question has been obviated by the subsequent recognition of the Carranza Government by the United States.

Underhill v. *Hernandez,* 168 U. S. 250, 253.
State of Yucatan v. *Argumedo,* 92 Misc. (N. Y.), 547.

The plaintiff then directed himself to attempting to point out the illegality in the procedure adopted

in assessing the tax and imposing the penalty for failure to comply with the tax imposed.

On the other hand, the efforts of the parties in the Ricaud case were directed solely to the question of the validity of the bill of sale of the goods in issue made to the plaintiff prior to the alleged seizure. The Court by directing judgment for the plaintiff necessarily decided that in an action *in rem* with the *res* before it, it had power and jurisdiction to award judgment in an action brought by an American citizen for delivery of the *res* before it.

It is indeed a most significant fact, to which the plaintiff-in-error himself refers (Brief, p. 13), that the Carranza Government scrupulously refused to sell the goods of an American citizen. When the Martinez property was gathered together, it was found that inadvertently a carload of merchandise belonging to an American citizen was merged amongst them. The Constitutionalist Government declined to attempt to sell this property and delivered it to its rightful owner.

POINT XIV.

The writ of error should be dismissed for want of jurisdiction and the judgments affirmed, with costs.

Respectfully submitted,

FRANK H. PLATT,
Attorney for Defendant-in-Error.

FRANK H. PLATT,
ELI J. BLAIR,
Of Counsel.

Appendix.

DEPARTMENT OF STATE

WASHINGTON, October 19, 1915

MY DEAR MR. ARREDONDO:

It is my pleasure to inform you that the President of the United States takes this opportunity of extending recognition to the *de facto* Government of Mexico, of which General Venustiano Carranza is the Chief Executive.

The Government of the United States will be pleased to receive formally in Washington a diplomatic representative of the *de facto* Government as soon as it shall please General Carranza to designate and appoint such representative; and, reciprocally, the Government of the United States will accredit to the *de facto* Government a diplomatic representative as soon as the President has had opportunity to designate such representative.

I should appreciate it if you could find it possible to communicate this information to General Carranza at your earliest convenience.

Very sincerely yours,

ROBERT LANSING.

Plain.

Guadalajara
via Galveston, Texas.

Dated March 3, 1917.

Recd 5:50 P. M.

SECRETARY OF STATE,
Washington,

March 3rd.

Presented my credentials today, at noon.

FLETCHER.

DEPARTMENT OF STATE

WASHINGTON

MARCH 10, 1917

MESSRS. PLATT AND FIELD,
120 Broadway,
New York City.

GENTLEMEN:

The Department acknowledges the receipt of your letter of March 5, 1917, in which you make inquiry concerning the nomination and confirmation of the Honorable Henry P. Fletcher as American Ambassador to Mexico. You request to be furnished with certified copies of documents establishing Mr. Fletcher's status, for use in legal proceedings.

In reply you are informed that Mr. Fletcher was nominated to be American Ambassador Extraordinary and Plenipotentiary to Mexico on December 17, 1915, and that the nomination was confirmed by the United States Senate on February 25, 1916. On March 3, 1917, the Ambassador presented his credentials to General Venustiana Carranza, Chief Executive of the *de facto* Government of Mexico, and a certified copy of Mr. Fletcher's telegram announcing this fact is enclosed herewith.

I am, Gentlemen,

Your obedient servant,

For the Secretary of State:
ALVEY A. ADEE,
Second Assistant Secretary.

1 enclosure:
Certified telegram
from Mexico, dated
March 3, 1917.
016.912/571 V

THE WHITE HOUSE

WASHINGTON

OCTOBER 19, 1915

MY DEAR MR. SECRETARY:

I am informed by the Department of State that the recognized *de facto* Government of Mexico is now in effective control of all the ports of entry in Mexico, except those along the international boundary in the States of Chihuahna and Sonora and all the ports in Lower California.

As an exception to the embargo placed on the exportation of munitions of war to Mexico by the President's proclamation of October 19, 1915, you will please instruct the collectors of ports and other officers of the Treasury Department to permit to be exported through the United States Custom Houses munitions of war for the use of the recognized *de facto* Government of Mexico or for industrial or commercial uses within the limits of the territory under its effective control as above set forth. This exception, however, shall not apply at the present time to shipments into the States of Chihuahua and Sonora, and into the territory of Lower California, and you will so instruct the appropriate collectors of customs and other officers of the Treasury Department.

Sincerely yours,

WOODROW WILSON

The Honorable
The Secretary of the Treasury.

A PROCLAMATION

WHEREAS, a Joint Resolution of Congress, approved March 14th, 1912, reads and provides as follows: "That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress",

And whereas, it is provided by Section II of the said Joint Resolution, "that any shipment of material hereby declared unlawful after such a proclamation shall be punishable by a fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both";

Now, therefore, I, Woodrow Wilson, President of the United States of America, acting under and by virtue of the authority conferred in me by the said Joint Resolution of Congress, do hereby declare and proclaim that I have found that there exist in Mexico such conditions of domestic violence promoted by the use of arms or munitions of war, procured from the United States as contemplated by the said Joint Resolution; and I do hereby admonish all citizens of the United States and every person to abstain from every violation of the provisions of the Joint Resolution above set forth, hereby made applicable to Mexico, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted. And I do hereby enjoin

upon all officers of the United States, charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said Joint Resolution and this my Proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the City of
[SEAL] Washington this nineteenth day of October in the year of our Lord One thousand nine hundred and fifteen and of the Independence of the United States of America the One hundred and fortieth.

WOODROW WILSON,
By the President,
Robert Lansing,
Secretary of State.

DEPARTMENT OF STATE

WASHINGTON

OCTOBER 20, 1915

MY DEAR MR. PRESIDENT:

Referring to my letter of October 19 enclosing a proclamation placing an embargo on the exportation of munitions of war to certain parts of Mexico and a letter to the Treasury Department on the same subject, the Department of Justice, desiring to modify the form of the letter used under previous embargoes, has suggested a change in the letter of the Treasury Department above mentioned, which suggestion I have adopted. This will necessitate,

therefore, a new letter to the Treasury Department—a new draft of which I enclose for your signature if you approve of it. I have requested the Treasury Department to return to me the letter which was sent you dated October 19th, and which the enclosed letter is intended to replace.

Faithfully yours,

ROBERT LANSING

Enclosure:

The President
The White House.

THE WHITE HOUSE

WASHINGTON

OCTOBER 19, 1915

MY DEAR MR. SECRETARY:

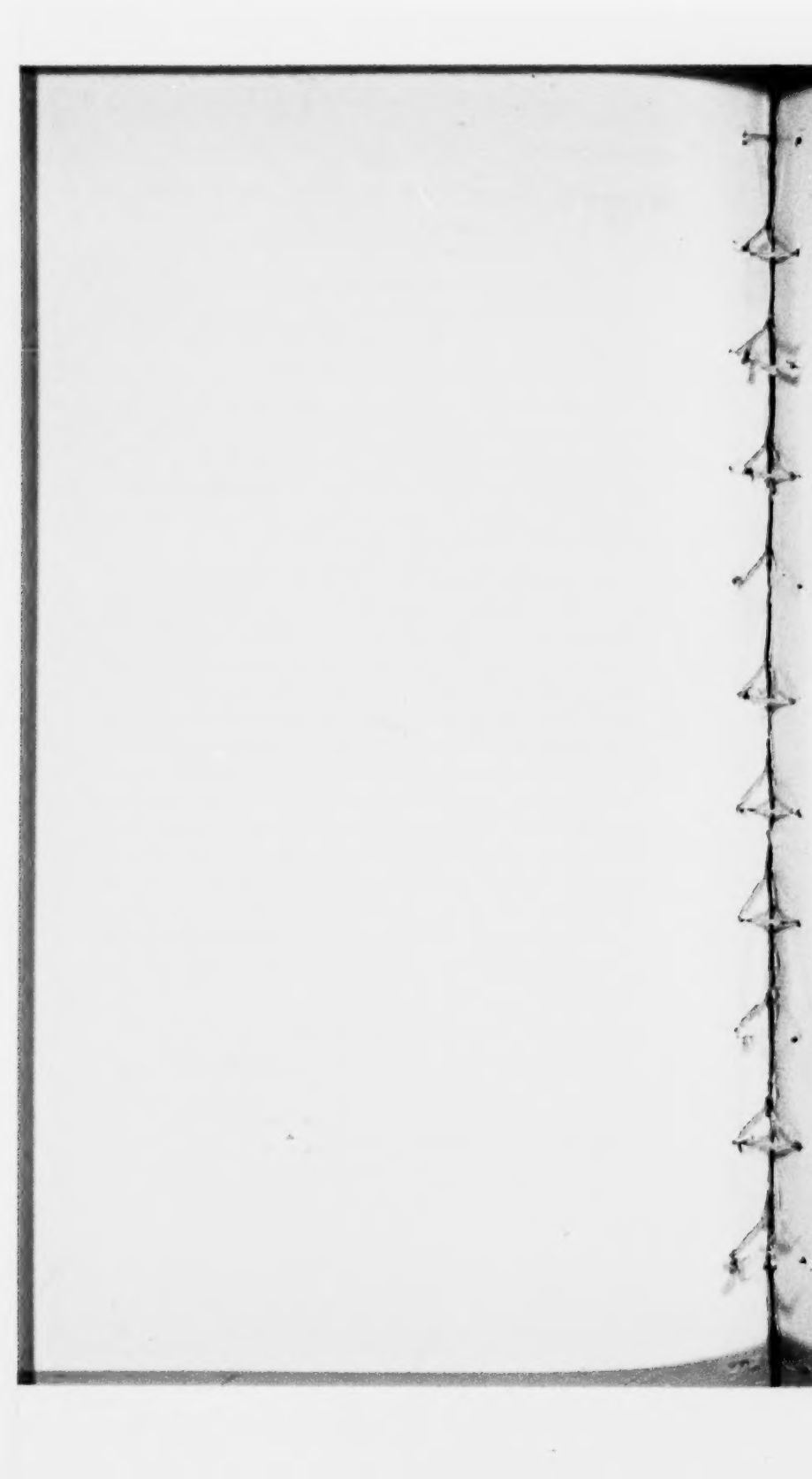
I am informed by the Department of State that the recognized *de facto* Government of Mexico is now in effective control of all the ports of entry in Mexico, except those along the international bounary in the States of Chihuahua and Sonora and all the ports in Lower California.

As an exception to the embargo placed on the exportation of munitions of war to Mexico by the President's proclamation of October 19, 1915, you will please instruct the collectors of ports and other officers of the Treasury Department to permit to be exported through the United States Custom Houses munitions of war for the use of the recognized *de facto* Government of Mexico or for industrial or commercial uses within the limits of the territory under its effective control as above set forth. This exception, however, shall not apply at the present time to shipments into the States of Chihuahua and Sonora, and into the territory of Lower California, and you will so instruct the appropriate collectors of customs and other officers of the Treasury Department.

Sincerely yours,

WOODROW WILSON.

The Honorable
The Secretary of the Treasury.



FILED
OCT 30
JAMES D. 3

Supreme Court of the United States

October Term 1917—Nos. 268-269

HENRY A. OETJEN

Plaintiff—Plaintiff-in-Error

vs.

CENTRAL LEATHER COMPANY

Defendant—Defendant-in-Error

On Writ of Error to the Circuit Court of Hudson County, N. J.

MOTION TO ADVANCE

JAMES D. CARPENTER Jr.
Attorney of Plaintiff-in-Error

FRANK H. PLATT
Attorney of Defendant-in-Error

Telephone 1697 Worth THE WEIBEZAHL PRINT 25 Elm St., N. Y.
—1917—



Notice of Motion to Advance.

Supreme Court of the United States

OCTOBER TERM, 1917 Nos. 268-269.

HENRY A. OETJEN, *Plaintiff-Plaintiff in Error,* *vs.* CENTRAL LEATHER COMPANY, *Defendant-Defendant in Error.*	On Writ of Error to the Circuit Court of Hudson County, N. J.

To

FRANK H. PLATT, Esq.,
Attorney of Defendant in Error.

Please take notice of a motion to be made before the Supreme Court of the United States, at the Capitol, Washington, D. C., on Monday, the fifth day of November next, at the hour of twelve o'clock noon of said day, to advance the above entitled causes so that the same may be argued before the Court with case No. 119 of the October Term, 1917, namely *Eduardo Ricaud, et al. vs. The American Metal Company, Limited.*

Further take notice that annexed hereto is an affidavit which will be presented to the Court at the time of the making of the motion hereinabove referred to, containing a brief statement of the matter involved with the reasons for the motion.

Respectfully yours,

Dated, October 27, 1917.

James A. Carpenter Jr.

Attorney of Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917 Nos. 268-269.

HENRY A. OETJEN, *Plaintiff-Plaintiff in Error,* *vs.* CENTRAL LEATHER COMPANY, *Defendant-Defendant in Error.*	On Writ of Error to the Circuit Court of Hudson County, N. J.

Affidavit of James D. Carpenter, Jr.

STATE OF NEW JERSEY, County of Hudson, } ss.:

JAMES D. CARPENTER, JR., of full age, being duly sworn according to law, upon his oath deposes and says: I am a member of the Bar of the Supreme Court of the United States and am the attorney of record for the plaintiff in error in the cases of *Henry A. Oetjen vs. Central Leather Company* mentioned in the notice attached hereto.

Certain of the important facts and questions involved in these cases are similar to those involved in the case of *Eduardo Ricaud, et al., vs. The American Metal Company, Limited,* which is No. 119, October Term, 1917. The numbers of the Oetjen cases are Nos. 268 and 269, October Term, 1917. The Clerk of this Court informs me that the Ricaud case being earlier on the docket will probably be reached about the first of December and that the Oetjen cases will not be reached in the regular call of the docket until about February 1st, 1918.

In both cases armed forces of the so-called "Constitutionalist (Carranza) Party" in the Fall of 1913, prior to their recognition by the United States, seized personal property then in Mexico, and then undertook to sell the property to an American, and shipped the property into the

United States. In both cases the original owner or his successor in title, is seeking to recover the property from the American purchaser from the Carranzistas. The forms of the actions differ, and they were brought in different forums, but substantially identical questions are believed to be common to both cases.

The case of Ricaud against The American Metal Company is on a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

The Oetjen cases are writs of error to the Hudson County Circuit Court, New Jersey, after affirmance and remittitur by the Court of Errors and Appeals, the court of last resort in all causes in the State of New Jersey.

In the Oetjen cases the question is involved as to the right of the plaintiff in error to possession under writs of replevin issued out of the Hudson County Circuit Court of certain hides which were replevined from the Central Leather Company. The latter company obtained possession and claims title through a Texas corporation named Finnigan-Brown Company, which in turn obtained possession and claimed its right by purchase from General Francisco Villa, on or about January 3, 1914, through negotiations in part transacted in El Paso, Texas, within the United States, and in part in the City of Juarez, in the Republic of Mexico. Defendant admitted on the trial that it claimed no better title than that conferred upon Finnigan-Brown Company through its purchase from General Villa, and the proofs showed that the control of the capital stock of Finnigan-Brown Company was owned by the defendant Central Leather Company at the time of the transactions in suit, and that no settlement had been made between the companies for the hides in question until after the beginning of the replevin suit and after the defendant Central Leather Company had full

knowledge and notice of plaintiff's claim; and further, that Finnigan-Brown Company at the time of making its purchase from Francisco Villa suspected and had reason to believe that the said hides had been taken from the owners thereof in the Republic of Mexico by force of arms.

The plaintiff's title came directly through the Mexican owner of the hides at the time of their seizure.

The Hudson County Circuit Court directed a verdict in favor of the defendant Central Leather Company, which was affirmed on appeal by the New Jersey Court of Errors and Appeals. The writ of error in these causes was tested the eighth day of August, 1916.

The assignments of error in the Oetjen cases necessarily draw in question:

(1) The validity of an authority exercised under the United States, namely the authority of the President and Secretary of State to bind the United States and all citizens and Courts thereof, including the Circuit Court of Hudson County, New Jersey, by their determination as to whether or not organizations or forces set up in the Republic of Mexico by General Carranza or General Villa, or any others acting under or with them, should be recognized as a government or as belligerents or as entitled to the rights of war. The Circuit Court in receiving and acting upon testimony as to political and military conditions within the Republic of Mexico, did, in fact, deny the validity of the authority of the President and Secretary of State of the United States to bind said Court by their acts in the premises.

(2) The validity of an authority exercised under the United States, to wit, the authority of the President and Secretary of State to determine and recognize whether a state of civil war existed within the Republic of Mexico, and whether contending forces

therein, or either of them, should be recognized as belligerents. The Circuit Court, in finding that a state of civil war existed in Mexico, and that the State Department of the United States had recognized such state of civil war and the belligerency of the Huertistas and Constitutionalists as contending forces, notwithstanding the express declaration of the Secretary of State to the contrary, did deny the validity of an authority of the President and Secretary of State to declare the political policy of the United States in the premises, and the authority of the Secretary of State to define and characterize the political acts of the Government in the above particulars.

(3) The validity of a treaty or statute of the United States, in that the Hague Convention by its formal adoption by the Governments of the United States and the Republic of Mexico, has become a treaty or statute of the United States and by adoption by the Pan-American Congress has become a treaty between the Governments of the United States and the other American nations participating therein, declared by treaty "Public International American Law."

(4) Whether or not the treaty or statute of the United States and the aforesaid authority claimed under the United States are applicable to the case at bar.

(5) Whether a seizure and sale by General Villa, in command of certain Constitutionalist forces in the Republic of Mexico, of the hides in question in these cases operated to pass title to the defendant in error.

(6) Whether such sale, when made by General Villa, was conducted in such manner as to be open to inquiry as to the legality of the title attempted to be passed in the Courts of the United States.

All of the above questions were duly raised in both the Hudson County Circuit Court and the New

Jersey Court of Errors and Appeals, and decided adversely to the plaintiff.

QUESTIONS INVOLVED IN THE RICAUD CASE.

The Certificate from the Circuit Court of Appeals for the Fifth Circuit in the Ricaud case shows that the complainant was the owner of 1,279 bars of bullion in September, 1913, and on the 13th of said month same was forcibly taken from the complainant's possession by persons unknown and without its consent; that said bullion was entered at the port of El Paso, Texas, consigned to one of the defendants, and that the defendants claimed ownership by purchase from General Orestes Pereyra, Chief of the First Brigade of Durango, Constitutionalist Army of Mexico.

The complainant had a decree in the District Court and the defendants appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals certified to the Supreme Court the following questions:

(1) Assuming that the bullion in suit was seized, condemned, and sold for war supplies by the Constitutionalist forces in revolution in Mexico, acting under authority from General Carranza, claiming to be the Provisional President of the Republic of Mexico, had the District Court of the Western District of Texas, into which the said building had been imported from Mexico, jurisdiction to try and adjudge as to the validity of the title acquired by and through the said seizure, appropriation, and sale by the Carranza forces as against an American citizen claiming ownership of the said bullion prior to its seizure?

(2) If yes, does the subsequent recognition by the United States Government of Carranza as the legitimate President of the Republic of Mexico and his government as the only legitimate government of the Republic of Mexico deprive this Court of

jurisdiction on this appeal to decide and adjudge the case on its merits?

(3) If question 2 is answered in the negative, did the seizure, condemnation, and sale of the bullion in the manner and for the purposes stated to be assumed in question 1 have the effect of divesting the title to or ownership of it of a certain citizen of the United States of America not in or a resident of Mexico when such seizure and condemnation occurred?

Deponent therefore prays that since the Oetjen and Ricaud cases are so similar as to their facts and the questions as to the law involved, the Court will order the Oetjen cases aforementioned to be advanced for argument with the Ricaud case, and for such other and further relief in the premises as may be just.

Subscribed and sworn to before me this 29th day of October, 1917.

James D Carpenter

Alice M. Boyle

Notary Public of New Jersey. (Seal)